# The Expanding Context of European and Mediterranean Security:

A joint project between the Center for Naval Analyses (CNA) and Centro Militare di Studi Strategici (CeMiSS)

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Approved for distribution:                                                                April 2007

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# REPORT DOCUMENTATION PAGE

The public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports (0704-0188), 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.
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| 1. REPORT DATE (DD-MM-YYYY) | 2. REPORT TYPE | 3. DATES COVERED (From - To) |
|---|---|---|
| 04-2007 | Final | |

**4. TITLE AND SUBTITLE**

The Expanding Context of European and Mediterranean Security:
A joint project between the Center for naval Analyses (CNA) and
Centro Militare di Studi Strategici (CeMiSS)

**5a. CONTRACT NUMBER**
N00014-05-D-0500

**5b. GRANT NUMBER**

**5c. PROGRAM ELEMENT NUMBER**
0605154N

**6. AUTHOR(S)**

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**5d. PROJECT NUMBER**
R0148

**5e. TASK NUMBER**

**5f. WORK UNIT NUMBER**

**7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES)**

Center for Naval Analyses
4825 Mark Center Drive
Alexandria, VA 22311

**8. PERFORMING ORGANIZATION REPORT NUMBER**
D0016044.A1

**9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)**

Chief of Naval Operations
2000 Navy Pentagon
Washington D.C. 20350-2000

**10. SPONSOR/MONITOR'S ACRONYM(S)**

**11. SPONSOR/MONITOR'S REPORT NUMBER(S)**

**12. DISTRIBUTION/AVAILABILITY STATEMENT**

Distribution unlimited

**13. SUPPLEMENTARY NOTES**

**14. ABSTRACT**

CNA and the Centro Militare di Studi Strategici (CeMiSS), the analytical group within the Italian equivalent of the U.S. National Defense University (CASD), agreed to conduct a joint project in 2006 on European and American views of the security situation in Europe, with particular regard for the situation around the Mediterranean Sea. The CeMiSS leader of the project, contributed a paper on Italian foreign policy. Daniel Whiteneck compared European and American views on the security situation. H. H. Gaffney discussed hard and soft power, noting that it represents a spectrum, not a dichotomy. Thaddeus Moyseowicz covered the experience and future of multilateral organizations in the Mediterranean context, and Mark Rosen discussed the questions of international regulation of the sea spaces.

**15. SUBJECT TERMS**

Europe, Mediterranean, US-Europe Cooperation, Law of the Sea, Multilateral Organizations

| 16. SECURITY CLASSIFICATION OF: | | | 17. LIMITATION OF ABSTRACT | 18. NUMBER OF PAGES | 19a. NAME OF RESPONSIBLE PERSON |
|---|---|---|---|---|---|
| a. REPORT | b. ABSTRACT | c. THIS PAGE | SAR | 128 | Knowledge Center/Rhea Stone |
| U | U | U | | | 19b. TELEPHONE NUMBER (Include area code) 703-824-2110 |

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# Introduction

On 17 November 2006 in Rome, the Center for Naval Analyses (CNA) of Alexandria, Virginia, USA, and the Centro Militare di Studi Strategici (CeMiSS) of the Centro Alti Studi per la Difesa (CASD) conducted the second of three prospective joint research conferences on US and Italian approaches to security issues of the enlarged Mediterranean area. The topic of the meeting was a comparison of US and European policies in the expanding context of European and Mediterranean Security.

The conference involved presentations by CNA and CeMISS researchers (Dr. Henry Gaffney, Dr. Daniel Whiteneck, Captain Thaddeus Moyseowicz, USN (Retired) and Captain Mark Rosen, USN (Retired) and Dr. Lucio Martino). Commentaries were provided by Dr. Alessandro Politi and Mr. Roberto Menotti. A question and answer period followed.

The meeting was notable for the significant participation by the Director of CASD, the Vice Chief of Staff of the Italian Navy, and over a dozen flag officers representing all three branches of the Italian services. On the whole, the conference was attended by over 60 officers and defense community experts, including international students from ISSMI (Italy's school for international officer military education).

## Presentations

The subjects of the presentations encompassed four dimensions of the changing security environment in the Mediterranean, and the papers supporting these presentations follow in this report:

- A comparison of American and European policies and changing political relationships with emerging nations in North Africa, the Levant, and the gateway to the Black Sea.

- The coordination of addressing "hard security" and "soft security" concerns of the US and southern European nations, with special attention to the differences in threat assessments and the use of different national forces to meet these varied threats.

- The potential contributions of multilateral institutions to problem solving for new security issues in the Mediterranean area (concentrating on the roles of NATO, the EU, but also broader organizations like the OSCE), and the use of these organizations to create cooperative solutions across the US-EU divide and the North-South divide.

- The impact of evolving maritime legal standards and regulations to address problems of migration, smuggling, environmental protection, and the movements of weapons as they relate to the rights and responsibilities of the US, the European nations on the Mediterranean, and the other nations of the region.

Before the report gets to these separate papers, it leads off with an analysis by Dr. Lucio Martino of CeMiSS on the basis of Italian foreign policy, including the constituencies to which political leaderships in any country must respond-where sometimes purely domestic concerns may have to be overridden by the need for greater solidarity among countries in maintaining both regional and global security for the greater good.

At the conference, Drs. Gaffney and Whiteneck also provided an update on their project of 2005 for CeMiSS, on the strategic implications of Iran's nuclear program, with special attention to Iran's involvement in the July 2006 war between the Lebanese Hezbollah and Israel.

The presentations were very well received and provoked serious discussion of US and European cooperative policies toward maritime security issues in the region. There was particular emphasis on the homeland security issues of southern European nations, the continuing US commitment to counter-terror and counter-proliferation efforts, and the potential for involving North African and other nations in cooperative efforts to increase regional security. In addi-

tion to these topics, commentators remarked on the need for greater cooperation to address instability in Lebanon (with attention to the role of European peacekeepers and the outside influence of Syria and Iran and terrorism). The conference concluded with a commitment to address the issues surrounding changing US and European force postures in the region as they affect the security environment from North Africa and the Western Mediterranean to the Eastern Mediterranean and the Black Sea.

## Background

In some ways, Europe and the United States may have entered a new era for the security of the Mediterranean area-or maybe the challenges are not so new, but take on new significance following some disturbing events.

Since the end of the Cold War, the Mediterranean area has generally been a very quiet place. There were troubles in the Balkans as Yugoslavia collapsed into its constituent republics, but the area has now been pacified. There is terror, and it has struck in Madrid, Istanbul, Algeria, Morocco, Tunisia, and Egypt. The terrorists have not evidently gone to sea, although the fear of terror and of proliferation of weapons of mass destruction has led to the Operation Active Endeavor patrols by the allied navies. What those patrols have encountered mostly have been boat people, that is, immigrants, trying to reach the more prosperous north. Operation Active Endeavor has at least been a good exercise in country cooperation. There's been cooperation, too, among the navies of Europe and of the United States in the Indian Ocean, where Combined Joint Task Force 150 has responded to attacks on merchant shipping by pirates off Somalia.

Trouble has always lurked in the Levant-in a way curiously detached from the rest of Mediterranean affairs, at least in the European and NATO context. Lebanon has long been a trouble spot, and especially since its descent into civil war back in 1975. There have been the five Arab-Israeli wars, and the homeless PLO had ranged around the Mediterranean and as far as Munich with their terror. The attempts to achieve Israeli-Palestinian peace have been endless.

Now, the Levant may have taken on a new strategic dimension with what some call "the sixth Arab-Israeli war." Part of that new strategic dimension is how Iran has extended its reach right to the coast of the Mediterranean-though for as long as its existence (an existence which Israel stimulated with its invasion of Lebanon 24 years ago) Hezbollah has relied on the support of the Iranian revolutionaries. We can talk about whether there's been a Hezbollah "victory"-as they defended their own territory, but created the perception that they had humbled Israel. Whatever the case, Europe and the U.S. are now seized with the problem of maintaining the cease-fire there, with European troops leading the peacekeepers.

But as Dr. Whiteneck has pointed out, we now have two separate Middle East problems. Al Qaeda terror seems to have migrated to Europe, or maybe just to Britain, with a strong connection to Pakistan. But there is a much more general problem of the Middle East, with the awful mess in Iraq, the looming Shia wedge into the Sunni Arab world, a greater strategic connection of Iran within the region, and the threats all these things pose to the stagnant Arab governments elsewhere. The Maghreb has otherwise been quiet, but perhaps a new wave of terrorist activity is gathering force there as of April 2007.

In the series of papers that follows, the authors have attempted to lay out both the challenges of maintaining security in the Mediterranean area and the various means of cooperation among long-allied countries as well as the Maghreb countries in meeting those challenges. These habits and practices of cooperation have been of long standing, and their revival in the current circumstances gives the nations assurances that they can continue to meet the challenges.

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# On Italian Foreign Policy

By Dr. Lucio Martino

In geographical terms, although a rigorous regional definition of priorities for Italy seems difficult to attain, it is possible to derive a map of "nodes" where Italian interests tend to concentrate, and will tend to do so in the future as well.

The historical record shows that around the main nodes—Mediterranean basin, Western Balkans, and parts of sub-Saharan Africa—commitments recur and are long-lasting, providing at least a reasonable basis for planning.

## Typologies of Italian intervention

Hence, four large categories of Italian intervention are eventually to be defined.

**I. In the first typology,** the Italian Armed Forces would be called upon to implement decisions that can lead to interventions that bear the full consensus of a cross-section of all the political forces within the government and the opposition, to the point in which the intervention will in itself express and summarize national interest.

This full-consensus typology would be frequently the case for those interventions carried out in response to the effects of the many natural and artificial calamities that have often stricken the Nation-as far as this may be possible. There are numerous examples of these—earthquakes, floods and fires. Also to be included are protection of the frontiers, the fight against organized crime and in certain cases the support given by the forces in the guaranteeing of public order and national defence.

**II. In the second typology,** the Italian armed forces may be called upon to intervene on the basis of decisions taken in foreign policy

and security and executed in an attempt to protect that which still remains within the sphere of Italian influence, which even still today rests on the ruins of the imperial experience of the last century.

These interventions do, and have born with them, an elevated degree of consensus, independent of whether or not their motivations are humanitarian, and of their cost, success, and the duration of the operation, no matter whether this consensus arises from among the traditional government forces or those of the opposition. This was the case in the military interventions in Albania and the Horn of Africa, as well as the particularly attentive foreign policy reserved for Libya both before and subsequent to Qaddafi taking over.

In each case Italy's determination to intervene, aside from any other condition—the participation and bolstering by NATO, UN, EU, etc.—was clear and it excluded (in as much as was possible) intervention by other relevant actors on the international scene, with Italy itself deciding on the policy and assuming command.

**III. In the third typology,** the Italian Armed Forces would be requested to implement decisions of foreign policy and security, in which proposals are implemented for the protection of the status quo of internal politics. As differences from the preceding typologies, the missions under this typology are never equated with the national interest by the entire political forces within the country, but generally spring from the support of only a single part of the Italian political system, which, given the variability of particular circumstances, may at times be the majority or the opposition.

This type of military intervention may, or may not, bear a multilateral or super-national cover: ad hoc coalitions, NATO, UN, EU etc. At least, in as much as it concerns Italian participation, it must always be relatively limited and kept to a substantially low profile, so much so as to be objectively lacking in bringing any influence to bear over the evolution of a particular crisis, as it would always remain limited by the consensus attributed to it through public opinion.

The characteristic feature in the third typology of tending toward non-influence renders possible the implementation through interventions of both normalization and aggressive destabilization within

a particular scenario. Furthermore, this kind of intervention cannot be limited to a particular geographical area of interest and its execution is not subject to special temporal limitations. There are many examples: the Congo, India-Pakistan, Middle East, East Timor, Lebanon, and the Persian Gulf ranging from the "Tanker War" to the present "Antica Babilonia."

**IV. Under the fourth typology,** the Italian Armed forces would be called upon to follow through with policies that bring about a "destabilization" effect on the political equilibrium of Italy's own government in order to support the advent of a new consensus.

This is what occurred at the end of the Fifties with the entry of the Centrismo politics into a political-strategic crisis (the removal of the Jupiter missiles), or at the end of the Seventies with the end of the Unità Nazionale politics (attendant on the decision to proceed with the installation of Cruise Missiles).

Independently of any multilateral cover, the decisions taken by the government and supported by the armed forces in these predicaments did not emerge from a shared vision of national interest. Rather, they were decisions that were, on the one hand, distinguished by a relevant international strategic context of a particular Atlantic—even if "Europeanist"—inspiration. On the other hand, they were notable for their contributing to a process of accentuated polarization in the entire national political culture, that is, while being done within a larger strategic context, they were divisive in the narrower Italian political context.

## The record of interventions

The Wars of Succession in Yugoslavia were in themselves a third and decisive testing ground. The widening gap of imposition between the Holy See and many European countries and more particularly between France and Great Britain on the one hand and Germany on the other long marked this crisis during all its phases.

This divergence between the European countries assumed and reproduced the old logic of European equilibrium and the guarantee of reciprocal areas of influence precisely like those at the beginning of

the last century. Also here the intervention of Washington, originally excluded by the first Bush Administration, was determinative in the solution to the crisis, that is, leading to the Dayton agreements, dictated anew by the concern that the Atlantic Alliance should not be put into question as could have brought about by the negative evolution of events under Europe's management.

The very same concerns forced Washington's hand to intervene in the Kosovo affair. The conflict concluded the last of the Balkan crises at the close of the century and was carried out under the auspices of NATO in its actual operative phase. But it brought out the latent contrasts within the Alliance, raising questions about NATO's reality at the time and its possible future.

The recent history of the Atlantic Alliance also reveals this concern. Halfway through the Nineties NATO still represented a fundamental strategic security structure for the United States. This was the case, notwithstanding the fact that the world had by this time become a very different place indeed to what it had been during the long years of the Cold War. As was pointed out by Strobe Talbott, at the time Deputy Secretary of State, the sole reason for America's not continuing to view the confines of the Alliance as those imposed after the wars by Stalin, was to eliminate an area of uncertainty in Central and Eastern Europe that would have inevitably lead to a reassuming of pre-war Europe's old logic of power-play. In other words, it would have set the power-mechanisms of old Europe in motion once again.

Since 1950, the Italian Armed Forces have conducted or taken part primarily as observers in a hundred or so missions in more than 40 countries, (some of these involving very small contingents). These were conducted together with other countries and under the auspices of the United Nations, NATO, the Union of Eastern Europe (UEO), the European Community, and other organizations. Amongst these, the operation of the largest dimension is still the first post-war overseas mission. From 2nd February to the 1st January 1956, and within the framework of a Trustee Administration assigned Italy by the United Nations, an Italian Military Contingent (as part of UNOSOM) was sent to Somalia, of which the sole army component

was initially composed of 4806 Army conscripts and Carabinieri, and then reduced to 2000 men.

Most observers agree that 1979 represents a turning point. The UN mission to Lebanon (UNIFIL, still operational) was launched in July of that year, with Italian contingents participating ever since. More importantly, Italy contributed to the first and second multinational (i.e. non-UN, although in application of UNSC Resolution 521) missions to Lebanon, in 1982-1984. While the first mission was brief and with rather narrow tasks (essentially protecting the withdrawal of Arafat's Palestinian militias), the second (alongside American and French contingents in West Beirut) was longer in duration and became more controversial domestically.

Yet, Italy's participation under dangerous and politically uncertain conditions showed that the country was capable of acting also beyond a technically UN (or NATO) framework. Such a commitment would have been inconceivable outside a region that the governments of the time (Spadolini, then Craxi—both from the ranks of the "secular" junior components of coalition governments still dominated by the Christian Democrats) defined as a crucial test of Italy's ability to play a larger, but also more independent international role.

In fact, this was the explicit assumption behind the Lebanon intervention: after having proved its reliability as a Transatlantic ally through the Cruise Missile decision in 1979, Italy's leaders wished to chart a partly new foreign policy course. It was only natural that this would happen within the Mediterranean region, in close cooperation with the US (and other Western allies), in circumstances that were closely related to the future of the Israeli-Palestinian issue—unanimously considered the stumbling block on the road to long term stabilization of the entire Middle East.

Also based on accounts by the decision-makers of the time, the Lebanon operations were viewed as an opportunity and the litmus test for Italy's ambition to play a more proactive role in a region where economic, cultural, religious, and security concerns overlapped. That experience provided an indispensable impetus for the gradual modernization of the armed forces and a more mature domestic debate

on the potential use of military force: both were to prove precondi-
tions for the commitments made in the 1990s.

Another by-product of similar circumstances was the agreement
reached with Malta in August of 1980 by the Under-secretary of the
Ministry for Foreign Affairs Zamberletti. In the terms of this agree-
ment Italy committed herself to the recognition of the Island's status
of neutrality and the guarantee that this be respected by the other
countries, in exchange for the commitment by Malta that no other
force would cross over the Archipelago borders. With its "Atlantic"
aim of excluding a Libyan and hence Soviet penetration into the
heart of the Mediterranean, the Maltese affair more than any other
episode indicated both the possibilities and limits of Italian power
politics within the Mediterranean area.

The fluidity of the international (i.e. both Euro-American, regional
and global) context greatly increased after 1989, when the experi-
ences of the 1980s suddenly became the background for Italy partici-
pating in a series of operations (of varying size and nature) of a
multinational type. By far the most demanding operations took place
in the first Gulf War then in Bosnia-Herzegovina and Kosovo.

A significant operation was mounted in Mozambique in 1993-94
(around 1,000 men). Among the multinational missions were Kurdi-
stan in 1991 and a smaller deployment to Rwanda in 1994. Among the
more significant deployments (in the peacekeeping/peace enforce-
ment category) we should then add the missions to Somalia (Mis-
sione Ibis, in the context of UNOSOM, 1992-94), Mozambique
(Missione Albatros, in the context of ONUMOZ, 1993-94), and East
Timor (Operation Stabilise, in the context of UNTAET, 1999-2000).

Operation Alba in 1997 was rather unique as an Italian-led mission
(following Missione Pellicano, a humanitarian national operation
conducted in 1991-93 which is usually listed as Italy's single "national"
operation since 1945). In the larger context of Italian commitments
in the area, there were also deployments in multinational formats to
Albania in 1999 (Allied Harbour) and to Macedonia (Essential Har-
vest in 2001, followed by Amber Fox).

The military intervention in Somalia beginning in late 1992was polit-ically very costly. It answered an ex-colonial logic, while at the interna-tional level, it opened and closed at the signalling of a profound crisis of the Somalis with the United States, in many ways analogous to that experienced on the clash between the United States and Libya during the middle of the Eighties. Notable at that time were the interna-tional polemics over the Italian operational and post-operational par-ticipation, in a manner not greatly different to that which took place during the course and the conducting of the second mission in Leb-anon.

Regarding Italian contribution to the first combat operation carried out under the auspices of NATO, the air-campaign over Kosovo and Sergia during the Spring of 1999, the usual internal Italian political dynamics were translated into a too important participation. Even though all Italy's principal assets and logistics were placed at the dis-position of the Atlantic Alliance, nevertheless Italy remained bound to the tactical campaign conducted solely in the skies of Kosovo, and not to the strategic campaign aimed at forcing a surrender on Bel-grade through attacking targets well within the actual Serbia.

The other Italian military missions during the Nineties were not endowed with any particular international political significance but indicated an enduring Italian sensitivity towards United Nations mis-sions-as had been the case for the previous Italian operations in Pal-estine and Lebanon in 1958, in Kashmir and Laos in 1959, in Yemen in 1964, and in India and Pakistan in 1965.

## Emerging patterns for deployments and interventions

A geographical pattern is easy to discern, although it is not a perfect fit for all the cases under consideration: most deployments have occurred along the Mediterranean coast/Persian Gulf region or in areas affected by NATO (and more recently EU) political and security commitments (such as the Balkans).

The missions to Albania and the countries of former Yugoslavia actu-ally combine a series of characteristics—geographical proximity, a Mediterranean dimension, and various levels of involvement by the EU, NATO and the UN. Sub-Saharan Africa is probably in a class of

its own due to the frequency and scale of humanitarian disasters, but it is also linked to a rising concern with limiting immigration flows to Europe—to which Italy is particularly exposed.

Somalia and Mozambique seem to have responded to cumulative but distinct "pull effects:" existing development assistance commitments and the obvious existence of acute political crises with humanitarian repercussions. The situation could also be read in the reverse: "Italian interventions in Somalia and Mozambique were responses to cumulative, but distinct, "pull effects," that is, the pull of existing development assistance commitments and the obvious existence of acute political crises with humanitarian repercussions." Actually, I believe the flood relief in Mozambique in the mid-1990s, to which the only U.S. response was the Air Force delivering relief supplies, was the reverse: "acute humanitarian crises with political repercussions."

East Timor should probably be seen as the exception that confirms the rule: an unplanned involvement in a situation where no previous commitment existed and no direct pressure from allies or major international organizations on Italy seemed to require a direct Italian role. It should be recalled that it took place in the wake of the Kosovo intervention: since the latter had been justified essentially as a "humanitarian plus stabilization" operation through a highly controversial political-legal argument, there was strong pressure on all NATO members, in particular, to demonstrate their genuine commitment to the humanitarian cause in East Timor, which by definition is stretching the geographical boundaries and distinctions to the utmost.

Participation in the Afghan missions, in the post September 2001 climate, is best understood as a tangible way to position Italy in the "leading pack" of US allies that are willing and able to contribute to complex expeditionary operations in countering some of the "new threats." This was a strong motivation for each of the European (as well as extra-European) countries involved in Afghanistan so far, to various degrees and with various tasks (from ISAF to special forces operations against remnants of the Taliban regime, to maritime operations and logistical support).

The same can be said of the ongoing Iraqi mission, Antica Babilonia, except that the government has clearly taken a far more risky path in this case, given the absence of a specific UN, NATO or EU institutional cover. But the official rationale for the Iraq deployment in 2003 was very similar to that provided to launch Italy's Afghanistan deployment. As in the past—in fact, since the early days of the Lebanon missions—Italy's military role has been placed under the rubric of "peace support," an obviously elastic concept which has continued to be stretched. The inevitable legal and operational problems raised by the rules of engagement necessary when deploying troops in harm's way have been mostly managed by stressing the task of protecting civilians and self-protection—not combat per se.

Formats (i.e. political, operational, and legal arrangements) vary widely across the missions, although practically all of them were presented to the Italian Parliament and public under the generic "multinational" or "multilateral" heading. A cumulative logic has been at play over the years since 1979: as Italian governments continued to define their key national interests in a multinational/multilateral setting (even after the end of the Cold War, which had originated this approach), and as NATO and even the EU (in addition to the inherently global UN) broadened the geographical scope of their potential military projection, Italy has found it hard to adhere to a strictly regional vision of its commitments. Priority has been given to Italy's standing as one the main regular contributors to Western engagements in crisis management and "peace enforcement".

In geographical terms, the EU policy towards the Mediterranean and the Middle East, together with the Neighborhood Policy, are generating an increased pressure to act in those areas, even engaging militarily when required. In any case, the scope of action of the EU is not narrowly defined in geographical terms, at least in the medium term.

The adherence to the principle of the "responsibility to act" in case of humanitarian crisis or major breach of law potentially extends the reach of EU operations well beyond its near abroad (e.g. to Afghanistan). However, while the European Security Strategy and the new EU Constitution imply an aspiration to become a stabilizing force that acts globally, in the near future, each member country will probably

be tempted to choose to act only in some of the operations proposed at EU level. While the possibility of escalation of some ongoing crisis should be taken into account, important countries such as Italy will be often tempted to intervene in any mission for prestige/status considerations. Many are the given examples of ongoing and possible future operations in areas not included in the near abroad.

The Italian participation in ESDP is one of the two major drivers of its defence reform, together with NATO, and could become the most important one in the future, should the EU further its defence policy at the supranational level. Given the general favour of the Italian public to the evolution of an European defence policy, in particular when peacekeeping and humanitarian interventions are concerned, in an important political commitment Italy has already dedicated to ESDP a relevant number of troops and capabilities. The 2003 Headline Goal involves about 12,000 army troops, supported by relevant naval and aerospace capabilities.

The possible evolution of the European Defence Agency could lead to an increase of cooperation at the procurement level, including common procurement and joint operations of a relevant number of assets. In qualitative terms, the initial capabilities will be devoted to "low end" Petersberg missions, including peacekeeping and long-lasting stability operations (such as in the Balkans).

In the long run, a step-up of combat capabilities is already foreseen in order to satisfy more stringent requirements, such as special operations and forcible entry operations in hostile environments.

The European Security Strategy and the new EU Constitution imply an aspiration to become a stabilizing force that acts globally, as confirmed by the establishment of an EU Gendarmerie, with a strong participation of Carabinieri. The fight against terrorism and against proliferation of Weapons of Mass Destruction has military implications; they imply the availability of specialized troops capable of acting anywhere. The relationship with the USA and UN will be paramount in this effort.

Present and estimated EU requirements for Italy are demanding both in geographical, quantitative and qualitative terms, and politically dif-

ficult to elude. The compatibility of policies and requirements coming from the EU, NATO and US is a crucial factor for a balanced new defence model. The overlapping between those international requirements is probably going to increase, together with the relevant problems of interoperability and jointness and the demand for high-tech forces devoted to high-level tasks. Moreover, a possible increase in technological industrial cooperation among EU industries (favored by the EC) would imply less dependence on the US.

## Italian foreign and strategic policy

The Cold War, especially until the first "détente" of the early 1970s, constituted a major structural constraint and the inescapable framework for Italian foreign, security and defence policy.

The Italy of De Gasperi saw in the Atlantic choice the best, if not the only way, to pass from the conditions of a vanquished state to that of a member state on a par with the international community and to free Italy from the heaviest inheritances left by Fascism.

The first traces of a foreign policy equally capable of keeping itself on roads other than those imposed by the Atlantic and Europeanist choices only became evident after De Gasperi's death, the best example being the international dynamism of the ENI of Enrico Mattei.

The Cold War arrangement of which Italy was a component and a participant—the Transatlantic alliance and American support for the progressive economic integration of Western Europe—did not truly extend to extra-European affairs. The partial exception was the US military presence in the Mediterranean basin.

Already in March of 1946, Truman inaugurated a constant naval presence in the Mediterranean by sending the USS Missouri to the Eastern Mediterranean with the declared objective of counteracting the pressures exercised by the Soviets on Turkey and on an extra-European country: Iran.

Despite the importance and geographic proximity of this region—all the more so for Italy, a peninsular country located in the heart of the Mediterranean—Italian security and defence policy continued to

focus almost exclusively on the threat from the Warsaw Pact until at least the late 1970s.

Major changes along a vast area stretching to the Southeast of Italy (and of NATO) then intervened: the 1979 Iranian revolution, the 1980 Iran-Iraq war, the 1981 assassination of Egyptian president Sadat. In addition, there was the Soviet invasion of Afghanistan in December 1979, which practically put an end to the uncertain phase of US-Soviet détente. 1980 was the year of the Venice Declaration by the European Council on the Israeli-Palestinian issue, marking an early attempt to pursue a unified or at least coordinated European policy regarding a key regional hot spot.

In this shifting strategic context, the first tentative steps toward a more active Italian security role were made, with rather long term cumulative consequences on its defence posture (as well as diplomatic profile). Lebanon—following the Israeli invasion—is the starting point of the gradual transformation.

It should also be borne in mind that support for the United Nations as the framework for collective security efforts had been (and is to this day) a constant refrain in Italian political circles, as part of the transition from the status of a country defeated in WWII to that of a full contributor to international peace and security. Considerations of status and regional interests overlap in this context.

Participation in multinational missions played an important function in raising the profile—and domestic support for—the Italian armed forces. Indeed, the need for UN legitimacy with regard to the use of military force has a constitutional dimension for Italy, being enshrined in article 11 of the Constitution.

To that extent, an entire series of operations such as those that lead to the massacre of 13 Italian aviators in the Congo (11 November 1961), or the preceding deployment of a military contingent of nearly five thousand men in Somalia between 1950 and 1956 were too important. Still others were launched without the auspices of the United Nations, such as the despatching of two cruisers and a disembarkation ship in 1973 into the Southern Chinese Seas in succor to the Vietnam "boat-people" or the deployment in 1973 of two cruisers,

two anti-torpedo-boats and a quota of helicopters to Tunisia in response to a grave humanitarian emergency.

Then in the case of the two missions in Lebanon during 1982, the first in August and the second in September, it was maintained that "the gravity of the situation could not sustain the drawn-out timing of UN". In this, as in many others situations, it was the complex logic of the internal Italian political equilibrium that freed the government of Rome from United Nations prescription and the dynamics of international relations in general.

As a combination of the above mentioned factors, an inclination to actively contribute to multilateral military operations of a specific kind (i.e. not in the context of NATO's integrated defence or the territorial defence of the country) gradually but naturally emerged in conjunction with peacekeeping and/or humanitarian operations in the spirit of the UN Charter—and in some cases under explicit UN auspices.

However, this eventually became the policy framework used to (re-)legitimize the rather flexible use of the armed forces for purposes other than territorial defence (or NATO integrated defence) but not necessarily limited to traditional peacekeeping. The blurring of distinctions between phases in the intensity or escalation ladder—typical of the Western experience of the 1990s—further accelerated this trend.

# Europe and the United States: New Politics and Emerging States in the Mediterranean

by Dr. Daniel J. Whiteneck

## Defining the Mediterranean

Instead of picturing the Mediterranean as a single region, with one set of political, economic, security, and social relationships; it seems more logical to examine the Mediterranean as embodying three separate regions, each with its own distinct set of relationships among the nations of Europe, North Africa, the Levant, the Aegean, and nations whose activities impinge upon Mediterranean area affairs from beyond the immediate neighborhood.

In the past, the European Union (EU) and the North Atlantic Treaty Organization (NATO), as well as their member nations, treated the Mediterranean region as a unified whole. The EU's Barcelona Process and NATO's Mediterranean Dialogue sought to envelop nations from Morocco to Israel in single organizational groupings. While issues were separated (i.e.; economics, security, environment), the Europeans and the Americans tried diplomacy in these forums that could be defined as "all or none" participation by the targets of their engagement.

A different method for engaging the nations of the Mediterranean would be to recognize and leverage the varying security, economic, environmental, and diplomatic issues in the three sub-regions. These are broadly defined in strategic terms as the Maghreb, the Levant, and the Gateway to the Black Sea. These three regions can be seen in figure 1 below.

Figure 1. The three regions of the Mediterranean
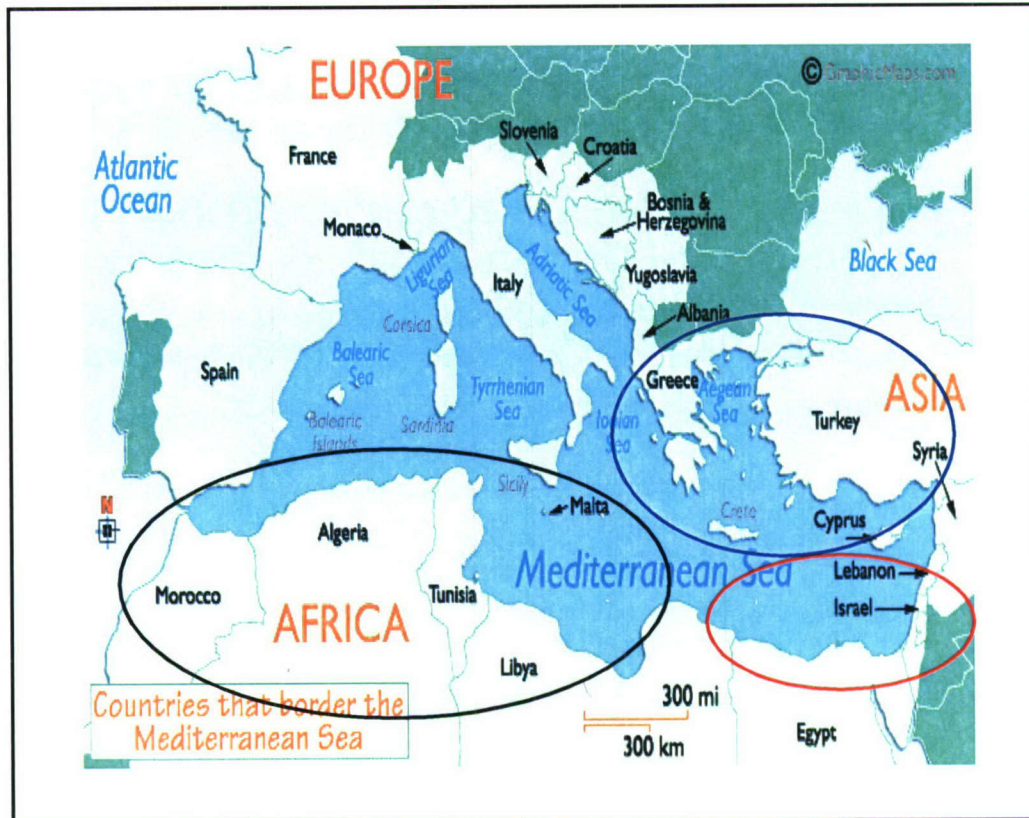


The first of these regions, the Maghreb, encompasses the countries along the rim of North Africa, from Morocco to Libya. The relationships of these countries are intimately connected with the EU members of the Western Mediterranean (Portugal, Spain, France, Italy, and Malta). Within the nations of the Maghreb are issues of political stability and economic and population growth, and the presence of over a million refugees waiting for the chance to cross the seas to the economic holy grail of the EU.

On the other side of the sea, yet in proximity to the Maghreb, lie the advanced European countries concerned about mass migrations of people from Africa and their impact on European societies and job markets, the threats of radical Islamic terrorism, and the transnational environmental costs of oil and gas explorations, over-fishing, and the security consequences of crowded cities in North Africa. The European nations are the partners of the United States, but the nations on either side of the Atlantic tend to take different

approaches to the Maghreb. The United States has been an active participant in regional engagement with the Maghreb countries, but its main emphasis has been on the possible spread of terror threats to and across the maritime domain and to be ready to intercept any possible flow of materials related to weapons of mass destruction (WMD) across the Mediterranean, including through the Straits of Gibraltar and the chokepoints near Sicily.

At the other end of the Mediterranean, in the Levant, the issues and concerns of the nations there and the Europeans and the United States could not be more different. The conflicts between Israel and the Palestinians, Israel and Hezbollah in Lebanon, and Israel and Syria dominate this area. Security concerns also absorb Egypt and Jordan, as well as Europeans taking part in peacekeeping operations, outside actors allied with parties on both sides, and American and EU diplomats trying to broker peace deals from time to time.

The situation is complicated by parallel security problems within this area. The potential for terrorists attacking along the coast or at sea ranges from the Suez Canal to the coasts of Lebanon or like the case of the Turk loading a sailing ship with explosives so he could blow up a passing cruise ship (luckily, he blew himself up when the police approached). These possibilities engage both the United States and the Europeans with individual nations. The involvement of outside supporters (Iran) with terrorist organizations (Hezbollah and Hamas) connects the security problems of the Levant to larger regional and even global dilemmas associated with Islamic extremism. The United States and Europe see their own defenses against terrorism tied at least in part to the successful resolution of the security problems of the area. Both assume that radical Islamic terror will continue to use the lack of a Middle East peace agreement between Israel and the Palestinians to generate further popular support for terrorist actions against Israel and the nations that support Israel's continued existence.

The last sub-region with its own set of issues is covered by the geography from Turkey and Greece and Cyprus, which, aside from the long-standing tensions among these three countries, are also at the gateway to the Black Sea. Economics, politics, and the enlargement of the

EU take first priority among both existing and aspiring EU members. Integrating Turkey and Cyprus into the EU are on the agenda for at least the next decade in slow and difficult negotiations. New possibilities for cooperation and stability and engagement in the Black Sea region, as the EU expands into Romania and Bulgaria and reaches out to Ukraine and Georgia depend partly on avoiding conflict between Turks and Greeks. All of these relations then lead to encounters with and the need to engage Russia-which has tended to be neglected in the relentless expansion of NATO and the EU, thus isolating Russia and raising totally unnecessary and unwise tensions. Fortunately, the Black Sea as a sea is a quiet place these days. There may be smuggling as usual going on, but there seems to be less of the boat-people movement that the Mediterranean shows. But, on the land adjacent to the northern littoral of the Black Sea, there are great troubles in Georgia, between Georgia and Russia and in the North Caucasus area of Russia. Moreover, there is much politicking going on about the building of pipelines from the expanding oil and gas reservoirs around the Caspian Sea. Some of the pipelines and tanker traffic crosses the Black Sea.

The separation of the Mediterranean into these three sub-regions opens up new possibilities for both American and European engagement on a range of issues. It also helps us identify different types of "emerging states" and their specific challenges for stability, growth, the containment of terrorists, and so forth. Once that is done, we can see how these relationships have evolved over time and their likely course into the future.

## What are "Emerging States"? Or is it more "States Emerging in their Global Connections"?

The long-standing concept of "emerging states, "which Europeans and the Americans discovered upon decolonization, for this exercise seems related to those states around the Mediterranean that are developing new political relationships with Europe and the US. At least one-Libya-is reestablishing relations after many years of frozen diplomacy. Libya is working its way back from isolation and opposition to normalization and engagement on both the political and economic fronts.

If we take the larger definition of "emerging," i.e., connections in globalization, we can see that a number of states across our three sub-regions are developing new political, economic, and social interactions with both Europe and the US, and that these interactions will form the basis for international relations across the Mediterranean for the next several years at least-and so we need how issues and challenges emerge from these changes in connections.

In North Africa, Libya is emerging from its isolation (based on its support for terror organizations and pursuit of WMD). What began in 2003 with openings to the UK and the US over dismantling its WMD programs has expanded into a number of engagements with Italy and other countries over a wide range of matters, from immigration to fisheries to energy exports and foreign investment in Libya's energy sector.

Also in North Africa, Algeria's relations with Europe and the US are undergoing changes as that government seeks to play a role in the collective effort in the war on terror through participation in NATO's Operation Active Endeavor (OAE), as well as cooperating with Mali and others against the GSPC (Salafist Group for Preaching and Combat) in the Sahel region. The Algerian government is also expanding its energy interactions with the nations of the EU.

Across the rim of North Africa, young, urbanized societies are struggling to maintain stability, which may be threatened by the spread of the Western culture of Europe and the US on one hand and the rise of the Islamic and Arabic media on the other hand. This sets up a cultural clash, with potential for dislocations and unrest and threats to embedded institutions and religious practices in these countries.

In the Levant, Lebanon may be emerging from its dominance by Syria for the past 30 years and may develop renewed relationships with its neighbors and Europe. And yet they are trying to do this while serving as a battlefield for the conflict between Hezbollah and Israel and with the more primitive Hezbollah seeking to increase its political clout within Lebanon. Syria and Iran are still exerting influence inside the country through Hezbollah. Now a large and increasing number of UN peacekeeping troops have been to patrol its southern lands and

its coastal waters, in coordination with the Lebanese Army. What Lebanon becomes will be shaped:

1. By its ability to forge a strong relationship with Europe to strengthen its secular government and its ability to create a country that once again becomes a link between the Middle East and Europe on one hand

2. Versus Hezbollah becoming the dominant political force within the country and building upon its links with Syria and Iran to create an opposing bloc.

Israel itself may also be emerging into a new relationship with Europe and the US, in part because of its growing isolation from the rest of the Middle East-a tenuous relation in the past at best. What will European and US engagement with Israel be like if its 'disengagement' policy with the Palestinians is successful? Will the EU and Israel form stronger economic ties in what should be a natural pairing for economic reasons, but is greatly affected by current politics, i.e., the desire of Europeans (and the US) not to have complete alienation from the Arab and Islamic world? Is it possible that Europeans and the US might decide that NATO should work with Israel to address security issues in the eastern Mediterranean, or would such connections prove vulnerable to ties between Arab governments and Europe? There is talk of this among political commentators, but no official initiatives have been taken.

Turkey is in the midst of developing new relationships based on its own evolving political, social, and economic systems, delicately balanced between East and West. Turkey and the EU are discussing a way ahead that would make Turkey a member of that organization over the next generation. This would also require Turkey and the EU-of which Greece is already a member, with a large voice-to work together to resolve the Cyprus.

A stable Turkey, still embedded in NATO and working well toward EU membership, could be a good model for future social and political relations between the West and the Middle Eastern states. It would also open up future cooperation for the emerging states of the Black Sea, including Russia, with whom Turkey has excellent relations. A

new set of energy markets and trade routes from the Black Sea through to the Mediterranean and on to Europe's major economic centers is already emerging, for which the stability and inclusion of Turkey would be crucial.

As we compare the US and European approaches to all of these new relationships with the other states of the Mediterranean littoral, American and European policies are still likely to be shaped by their historical roles in the region and how each views the challenges, opportunities, and threats in the political, economic, and security environments in the Mediterranean as the future unfolds.

# The role of the US and its regional priorities

### The Cold War Era

Throughout the period from 1946 to 1990, the United States made security of NATO's "Southern Flank" its focus for regional engagement with Europeans and other NATO nations on the Mediterranean. This commitment was most visible in the military alliances forged, the sustained presence of US maritime and air forces on bases in the region and at sea, and its continuous diplomatic activities to help resolve issues that arose across the region, like Cyprus, or Greek-Turkish frictions.

In the western and central Mediterranean area, the US anchored the NATO alliance's military position with its own substantial air and naval forces (including bases in Morocco and Libya until the 1970s). They patrolled the seas, confronting the growing deployments of Soviet submarines and surface ships. This means that there was no disruptions of the sea lines of communication (SLOCs) from Gibraltar to Suez. The US and its allies prepared to use the bases in the region, under mutual agreements, for operations in the event of a general conflict in Europe or local conflict in the Mediterranean. The US Air Force maintained tactical bases there (and strategic forces until the early 1960s, and the Navy maintained two carrier battle groups, a ready amphibious force, and SSBN patrols, in the region.

This military focus was centered on partnerships with the other NATO countries in the region (France, Italy, Greece, Turkey, and later Spain, where the US already had bases), as well as key partners from outside the region (UK and Portugal). As the 1980s wore on, the navies of these countries formed the NATO Standing Naval Force, Mediterranean (STANAVFORMED), on the model of the long-standing Standing Naval Force, Atlantic (STANAVFORLANT).

Maintaining political stability and preventing the spread of conflict in the Levant also engaged the US in the area. The Suez Crisis of 1956 marked the point where the US took effectively displaced the premier roles in regional security from the former colonial powers (UK and France). The US intervened in Lebanon in 1958. The US supported Israel's coming into existence in 1948, and took over as the main military supplier to Israel after the 1967 war (major programs were not funded until 1970). The US ran resupply to Israel in the 1973 war, but with the help of only Portugal, and Soviet and American naval forces maneuvered anxiously around each other during that war. The US then worked as the broker and guarantor of a peace agreement between Israel and Egypt. Along with other NATO allies, the US cleared mines and other obstructions from the Suez Canal in 1975. This was of great benefit to the US and other NATO navies in ensuring a shorter connection from the Mediterranean to support friendly governments of the Persian Gulf and then to contain the wars that followed (Iraq-Iran, 1980-1988, and to eject Iraq from Kuwait in 1990-1991).

The US also started a long history of military and political involvement in the Aegean with the Truman Doctrine in 1947 (aimed at sustaining Greek and Turkish alignments with the West in the face of the Communist guerrilla war in Greece and other pressures against Turkey). They used using military deployments (e.g., the USS Missouri visit to Turkey in 1948, military and economic assistance, and political support for parties and governments that sought to establish democracy and market economies. Both countries joined NATO in the 1950s as NATO strengthened its forces against the Soviet Union, triggered by the Korean War.

The US would continue to see NATO and security interactions as the dominant forum for engaging both Greece and Turkey (and the other NATO members in the area) throughout the Cold War. In its diplomacy (and those of other NATO members), it stressed the larger geopolitical concerns NATO members in order to reduce the bilateral tensions between both countries that existed at all times below the surface and sometimes exploded into a crisis, like in Cyprus in 1974.

The importance of engaging both countries and keeping them satisfied within the NATO fold supported the larger objective of keeping the Soviets bottled up in the Black Sea to the extent possible (freedom of the seas and the Montreux Convention meant that the Soviet Union had appropriate access to the Mediterranean).

## After the fall of the Berlin Wall

The dominance of the security dimension in US government (not necessarily business) policy and presence in the Mediterranean region meant that the fall of the Berlin Wall obviated the necessity for US military presence, and thus engagement, in the years after 1990. And yet with the Gulf War of 1990-1991 and the continuing containment of Iraq and Iran across the 1990s, US naval forces at least were transiting the Mediterranean frequently and taking the opportunity to exercise with allies while passing through. The US was involved continued diplomacy in support of the Middle East peace process even after the Cold War. And yet the long resolution of the troubles as Yugoslavia broke up across the 1990s, including the wars in Bosnia and Kosovo and the long peacekeeping efforts there kept the US and NATO engaged in new forms of military interaction and planning.

US security interests in Mediterranean waters per se became focused on the terror threats across the sea and in the Straits of Gibraltar. The shift was to the surface combatant ship rather than carriers and amphibious groups. They continue to conduct exercises and coalition maintenance operations with NATO allies, especially in Operative Active Endeavor. The historical associations developed in NATO across the Cold War were adapted to the new situation, even if far less threatening.

The US watched as it encouraged Europe to take the lead on resolving the conflict in Bosnia from 1991 until 1995, but, with the utter failure of UNPROFOR to stop the fighting led to the US reassuming a leadership role in NATO as it pushed for the use of real force-not peacekeepers standing around watching the slaughter-to end the conflict in Bosnia and bring Serbia to the Dayton Peace Conference. The situation was repeated in 1998 and 1999 as NATO again used force to end Serbian aggression in Kosovo. In both cases, the US greatly increased its presence and operations in the region, leaving only ground force peacekeepers behind as part of the international peacekeeping forces. The U.S. has, however, left all civil administration to Europeans, and the EU has now taken over the forces in Bosnia.

As for the Maghreb countries, the US saw that NATO's Mediterranean Dialogue was engaging them constructively. The US continued its own bilateral relations with Egypt and Israel, with their associated massive military and economic programs, as part of trying to maintain stability at the eastern end of the Mediterranean. The US wanted the Mediterranean itself to be a peaceful lake. NATO's emphasis on tailored advice to the littoral countries on defense reform, defense budgeting, defense planning, civil-military relations, and promoting military-to-military cooperation to achieve interoperability were all seen as contributing to general improvement of relations between the nations and to create more professional militaries ready to contribute to more stable and open governments in North Africa and the Eastern Mediterranean.

This formula made sense to alliance members in the aftermath of the Balkans. The 'enemy' was defined as instability and the conditions that led to conflicts between nations with religious or nationalist hostilities. The Dialogue was to build confidence between neighboring states, as well as to help prevent internal instability. This would allow NATO to prevent conflicts from arising and allow it to avoid further interventions in light of the long and costly stabilization operations in the Balkans.

At the same time, the war between Israel and Hezbollah in July 2006, and the continued war with Hamas in the Gaza Strip as well as the

general deterioration of the plight of the Palestinians, have tended to threaten the stability of the entire region.

## US policy after 9-11

While the US focus on the security of the Mediterranean region was reinforced by the terror attacks on 9-11, the government and military changed their activities from engagement and security cooperation with emerging states to activities based on counter-terrorism and combating the spread of WMD, and strengthening the capacity of partner nations to help accomplish these objectives from one end of the region to the other.

US military activities quickly centered on NATO's Operation Active Endeavor (OAE) in the aftermath of the 9/11 attacks. Naval and air forces were first deployed to the Eastern Mediterranean to be on the lookout for terrorists and their associated shipping, to help secure the economic lifelines and energy routes and the lines of communication (SLOCs) for transit to the Arabian Gulf and the eventual war with Iraq. This mission then expanded to include all of the Mediterranean, and it kept NATO standing naval groups busy tracking, investigating, and searching suspicious shipping. In addition, the US-initiated Proliferation Security Initiative (PSI) put military forces to work looking for WMD materials that might be going to rogue states (Libya and Syria in the region, and Iraq and Iran outside the region).[1] Reaching out to the emerging states of the region, in addition to old NATO allies, meant getting countries to help in these efforts with access, sharing information, and exercising for potential involvement in the missions themselves.

These same issues dominated engagement with Israel and the Arabs. While Israel was coping with its local terrorists-Hamas and Hezbollah, the West was focusing on the more global nature of terrorism, specifically that associated with al Qaeda, especially since that terror

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1. Libya's decision to abandon its WMD programs and change its relations with the US and Europe in the aftermath of 9-11 bolstered the American assumptions that counter-proliferation operations, economic sanctions, and diplomatic pressure were the key to dealing with rogue states.

seemed to be spreading among immigrant Islamic people in Europe itself. The US itself, far across the Atlantic, seemed to be more successful in preventing such immigration, whereas in Europe many of these people were already present, but seemed to become more alienated from the societies in which they were resident.

# The view of the Mediterranean from Europe

## Cold War support to the US and shedding the colonial past

European politics in the region during the early years of the Cold War were concentrated on their own internal rebuilding after WWII and, by the late 1950s through 1975, divesting old colonial possessions (while fashioning relations with these newly independent states that capitalized on old economic and political ties, though the French kept civil administrators and army units in a number of these countries through the 1980s). Economic development was important to stabilizing southern Europe as the countries there faced internal and external communist pressures. To this was coupled a security connection to the United States as Europe became 'ground zero' in the Cold War with the only deployment of Soviet troops (27 divisions and associated tactical aircraft and missiles) outside the Soviet Union itself. US anti-communist support came in the form of military presence, economic assistance, and monetary support for anti-communist political parties and politicians.

With the support of the US Marshall Plan, France and Italy concentrated on economic development, especially after the establishment of the EEC in the late 1950s. With Britain and France engaged in Germany (the 'main front') and with the disaster of the Suez Crisis in 1956, the age of colonial power outside the region was at end. By the early 1960s the period was over; France would leave Algeria after a bloody attempt to preserve colonial power. France would also settle the status of Syria and Lebanon (trying to divide political power by ethnicity and religion in complex formulas that would still be fought over 30, 40, and 50 years later), and the British would leave Iraq, Palestine, and Cyprus to be fought over by contending religious, ethnic, and power groups to this day.

What Europe got was freedom. It was freedom from the political and economic costs of empire, from the diplomatic front lines of the Cold War (concentrating on trade with former colonies from their own maturing industrial capabilities), and from the excessive military costs of security in the region (Europeans provided 70 percent of NATO forces in Europe; the US provided the other 30 percent, plus the nuclear umbrella, plus reinforcements-which the Europeans never quite believed in, in part because they thought it an excuse for the US to move even more forces home and to decouple the nuclear umbrella). The system served both European nations and the US well as they benefited from the region's stability and their own economies grew across this period.

## From the Berlin Wall to the EU's Copenhagen Summit

When the East Germans breached the Berlin Wall (and Hungary before that had breach the Iron Curtain), the euphoria over the advance of freedom and the retreat of the Soviet rule from Eastern Europe had disparate effects across parts of Europe. Central Europe focused on German reunification and the internal revolutions wrought by Lech Walesa in Poland and Vaclav Havel in the Czech Republic. In the Mediterranean region, the dominant story soon became one of warfare, as Yugoslavia collapsed and fighting between Muslims, Serbs, and Croats in Bosnia tested politics, security, and diplomacy in Southeastern Europe.

With the US military and diplomatic activities shifting out of Europe and into the Persian Gulf, and only five years later shifting back to Bosnia, the Europeans were seen as being left responsible for the stability of the region-not hard considering there was no more threat. It was apparent that common positions and approaches to the conflicts breaking out in the former Yugoslavia would be difficult to achieve within the EU or within NATO, especially as to the question of mobilizing forces to intervene. Greece and Turkey leaned to different sides in the conflicts, and France and Germany took diplomatic steps to support Serbs and Croats respectively. Italy's focus was dominated by the possibility of the spillover of conflict into Albania, and thus renewed concerns over Albanian refugees streaming to Italy, and the need to ensure Slovenian independence right across their border.

Therefore, for almost an entire decade, the nations of southern Europe looked at the Mediterranean region beyond the Balkans only occasionally, as they were consumed by the problem in their midst.

Relations with North Africa were stagnant. Libya was isolated by its support for terrorism in the 1980s (from Berlin disco bombings to Lockerbie) and the sanctions placed on that country. Algeria descended into internal fighting as Islamists and the military struggled for control of politics by all means from the ballot box to the use of terrorism and repression. On the margins were issues over economics and fisheries with Tunisia and immigrants and trade with Morocco.

What Europe did was try to draw lessons from the Balkans for dealing with North Africa. If internal instability could lead to the break up of nations and ethnic or religious warfare, then EU efforts to stabilize countries politically and economically (as well as creating better civil-military relations), could avoid a Balkan situation in Africa. Therefore the EU's Barcelona Process tried to play a similar role as NATO's Mediterranean Dialogue, but on other issues.

Barcelona tried to bring the nations of the region into one forum and treat them as a single group on issues of social stability and exchanges, economic development, environmental protection (especially fisheries, oil pollution, and population pressures), and internal political stability. The problem was that the nations of the region did not want to be treated all alike, the EU nations were mainly interested in re-invigorating economic ties and investment, and maintaining their own sovereign control of the process became paramount for the North African and Middle East countries.

European nations also took a back seat to aggressive US diplomacy to resolve the Israeli-Palestinian Middle East dispute after the Norwegians had brought off the Oslo Agreements in 1993. Once those agreements had been reached, the Clinton administration took the prime activist role in the peace process throughout the decade. Washington still dominated because there was no common European voice, Israelis did not trust the Europeans, and Washington was prepared to guarantee agreements with security, economic, and political backing in ways the Europeans were not prepared to.

Given the political developments in North Africa and the Eastern Mediterranean, and the proximity and possible ramifications of a Balkans collapse, it is no wonder that the European priority for a decade was the former Yugoslavia. All of that would last through 1999 and the expulsion of the Serbian government and army from Kosovo, and until 2001 and 2002, when Europe would re-discover important issues in all three of the Mediterranean sub-regions. The future of the EU, the end of the conflict in the Balkans, terrorism and homeland security, and the birth of a 'European' voice would reshape Europe's role in the Mediterranean in the new century. And yet the EU was also struggling with its own expansion east, to adjust to the new Euro, and to consolidate the sharing agreements within the expanded EU.

## After 9-11 and Copenhagen: "Homeland Security" and Engagement

In the Western and Central Mediterranean, European response to the new security environment after 9-11 was very different from the US. The US pursued new political and military activities and relationships through the prism of the Global War on Terrorism. In contrast, the Europeans fashioned a new set of political and security activities based on what can be defined as the EU's 'homeland security.'

Europeans joined Americans in increased naval and air patrols over the waters, but where Americans saw terrorists using the maritime domain for acts of terror or transit between terrorist havens, Europeans saw terrorists able to make their way across the sea into the homelands of Europe. Nonetheless, the patrols took place, and no terrorists were caught-only boat people seeking a new life in Europe. At the same time, these patrols served to control the illegal immigration and smuggling into Europe, as well as illicit maritime activities in fisheries.

To these activities were added political openings to governments in Morocco, Algeria, and Libya to work together on patrols, sharing information, handling migrants passing through those countries from sub-Saharan Africa, and maritime policing functions. Algeria and Libya, otherwise facing political isolation because of their past

internal and foreign policies, were sought out for engagement on each of these issues.

Spain, France, and Italy all reached out with bilateral programs to Morocco, Algeria, and Libya respectively, and Portugal took a lead role outside of the Straits of Gibraltar on EU efforts to interdict migrants and drugs. They found willing partners on the other side of the Mediterranean, as North African governments came under pressure from over a million illegal migrants from sub-Saharan Africa scattered across the rim of the continent. These governments also opposed Islamic jihadist movements in their own territory, especially the GSPC as the remaining group in Algeria.

This defense of the EU homeland gained credibility throughout the region when thousands of migrants were stopped by maritime patrols off Portugal, Spain, and Italy. Then, terrorist cells based in Morocco threatened shipping in the Straits of Gibraltar in 2003 and 2004, and Moroccan-based terrorists succeeded in a spectacular attack on the Madrid train system in 2004 that soon brought down the Aznar government, which had been teetering on the brink of losing anyway, but to the distress of the US Government, which feared its downfall was all due to the terrorists. To this could be added the increasing radicalization of a large North African population in France that was suspected of including potential terror threats (especially after the riots in the fall of 2005-though the general view of those riots was that the North Africans wanted full identity within France, not to be continually treated as second-class citizens, as they reminded the France authorities briefly on the anniversary in the fall of 2006).

At the other end of the Mediterranean, the defining event for new relationships was not 9-11, but the Copenhagen Summit. The enlargement of the EU to the last of the former states of the Warsaw Pact left only the war-torn Balkans and Turkey seeking membership.

America looked at the Balkans as the EU's responsibility now that NATO had turned over most duties to it, except for NATO's role in helping the UN settle the final status of Kosovo. The US also looked at Turkey through the security lens, focusing on Turkey's growing role as a naval leader in the Black Sea, on its role as a buffer against Ira-

nian interests to the south and east, and on the impact of a destabilized Iraq on the Kurdish question.

The EU, on the other hand, concentrated on the problem of integrating Turkey into the EU (a contentious issue among the existing member states) through social and political and economic engagement. The governing assumption was that settling the Cyprus question and beginning an accession process would create a new dynamic in the region. Turkey would be a stabilizing, moderate Islamic country, with ties to the West, and would thus provide an incentive to help resolve issues in Muslim areas, in the Balkans, the Turkic countries of the Caspian and Central Asia, and through the great Middle East. The EU would use the membership process to push Turkey toward internal social and political developments that would offer a model of moderate, democratic Islam as a counter to the repressive regimes in the Middle East that were seen as the fountains of radicalism.

It will take time for the success or failure of this model to be proven. The idea that economic interests would help resolve the political disputes over Cyprus is in trouble, as Turkey remains opposed to opening trade with the Greek-dominated Republic of Cyprus. Until they take this action, further economic advances between Turkey and the EU are at risk. This economic relationship is also a key for EU and Turkish approaches to oil and gas passage through the Black Sea and through nearby pipelines (the Blue Stream gas line from Russia to Turkey is already functioning).

Politically, EU pressures for further liberalization of Turkey's laws on terror (the Kurdish issue), free press, and civil rights, have clashed with the Turkish government's attempts to answer to strong nationalist popular sentiment (seen most recently in demonstrations over anti-Islamic Jihadi cartoons in Europe and reactions to the Pope Benedict XVI speech on religious tolerance) and the government's concern that any changes in the relationships between Kurds in Turkey and Iraq will impact their control of southeastern Turkey. Resolving these issues are a prerequisite for the further development of EU-Turkey relations and for cooperative approaches to stability in this region of the Mediterranean.

Lastly, since 9-11 and Copenhagen, the EU has taken a renewed interest in a common approach to the issues of Israel, the Palestinians, and Israel's Arab neighbors. The assumptions that instability in the region would draw Europeans into the region for peacekeeping missions, or that continuation of the Israeli-Arab conflicts would soon inflame the Muslim minorities in Europe, insured that Europeans would see this region as a key area where they would have to stay engaged lest there be spillover to their own states.

Javiar Solana, as head of the EU's Common Foreign and Security Policy, tried to represent the EU in the Roadmap talks between Israelis and Palestinians. Europeans tried to use economic levers to help shape the approaches to both sides, but security concerns have been dominant since the beginning of the Second Intifada. So far, the individual states of Europe and the EU itself have been unable to demonstrate that use of the economic levers that proved so helpful in post Cold War Europe are transferable to other regions.

The government in Lebanon seeks to reestablish itself and reestablish long dormant ties (economic and political) to Europe even as it accommodates Hezbollah. Its response to the involvement of Europe has been very positive. Some other Arab governments also look favorably on a greater EU role as they seek to balance an America that they view as too supportive of Israel-demonstrated when President Bush refused to seek an immediate cease-fire in southern Lebanon and egged on Israeli air strikes instead. On the other hand, Israel keeps the EU and its members at length, trusting in its own security policies and the special security relationship it has with the US. So long as this gulf endures, the EU finds itself unable to exert greater influence in the region.

In 2006, the EU decided that leadership of the UNIFIL mission in Lebanon would give it more leverage in the Middle East peace process, and its member states are contributing thousands of personnel. So far, the truce has held, and there have been no clashes between the peacekeepers and Hezbollah. Whether this effort will give the EU a larger role in helping resolve all the Middle East disputes along lines suggested by its members, is also still unproven. What is apparent is that there exists consistent support for a strong EU role in the region,

one that seeks to use all of the foreign policy tools of the EU to achieve resolution of the conflicts.

## Comparing US and European approaches: conclusions

How will the US and Europe respond to new issues with states that are emerging into new security, economic, and political relationships across the Mediterranean? The answer to that can be found in the pages above. Both the US and its European allies have shown both continuity with past practices and policies and some changes to adapt to new circumstances.

They will continue to cooperate on most major initiatives in the region, through multilateral actions or institutional responses (NATO, G-8, Paris Club). But from case to case they will also use different policy tools and have differing assumptions about the source of problems in the region and the best remedies for addressing them. This will not be a sign of fundamental splits between the US and Europe, but more a function of each using its particular strengths to address problems that each recognizes, but may assign different priorities at different times, again depending on the circumstances and opportunities as they arise.

The US will continue to see the region through the lens of security and the War on Terror. For the foreseeable future, it will support (1) NATO patrols of shipping across the region, (2) counter-terror patrols and policing of the Straits of Gibraltar to assure the free flow of military and civilian maritime traffic, and (3) robust defense of Israel (by Israelis) against threats from Arab states and terror groups.

The US is likely to continue its substantial military and economic programs with Egypt and Jordan and its military programs with Israel, as well as trade with each of these countries. US associations with the oil-producing Gulf states, especially with Saudi Arabia, remain solid. But US foreign investment in North Africa, the Aegean, the Balkans, or the Black Sea is minimal. US actions in the region will be framed by security interests, especially the need to ensure the continued flow of oil (which the US provides as a service to the market, not because it

somehow wants to seize the oil for itself) and the need to work with European allies to support their own security interests.

On the other hand, Europeans who see the Mediterranean as the frontline of their homeland security will use militaries, coast guards, and police/customs forces in concerted efforts to address problems of migration, to include intercepting the travel of potential terrorists. Since these countries see economic and government failure in countries to the south as the source of migration and instability, they will work with countries in North Africa to address these root causes. They will use homeland security forces for protection, but they will be coupled with economic programs to attempt to create greater stability and prevention of problems.

The Europeans will use their Common Foreign and Society Policy (CFSP) to address issues with Turkey and Cyprus and with Israeli-Arab issues, believing that the EU can use combined economic incentives and political engagement to move countries towards peaceful resolutions of long-standing conflicts. These are assumed to be springboards to increased EU economic and political connections to the emerging energy markets and trading possibilities in the Black Sea and the Middle East (again, based on an assumption that such trade and aid connections increase stability, which in turn could reduce the generation of extremist elements in society).

As the US and Europe look to the Mediterranean of the future, they can see areas of cooperation and coordination. They can build on each other's strengths. In that case, NATO could be the venue for addressing security issues from one end of the Mediterranean to the other, so long as it was conscious that issues differed widely from one to the other, and it did not try to address each issue through one form of engagement.

At the same time, the EU and the US should agree on common mechanisms for engaging the regions on economic and diplomatic issues. Combining their levers of resources will help address issues of tying the energy markets of North Africa to Europe as well as opening up new avenues in the Black Sea region-providing that they work very hard to make sure Russia is included and is not isolated. Both Israeli and Palestinian states would benefit from economic engagement with

Europe and diplomatic support of a two-state solution (even a solution based on a wall of separation) not just from the US, but from a united US-European front.

The key to these solutions will be recognizing that the US and Europeans need not sacrifice one agenda to the other, but accept that the interests of both can be complementary and self-reinforcing across the region.

# Hard Security vs. Soft Security: What are the Threats?

by Dr. H H. Gaffney, The CNA Corporation

## Introduction

In the southern European and Mediterranean region, American strategy and operations have been motivated by:

1. Combating terrorism and proliferation;

2. Expanding NATO's maritime activities in cooperation with the littoral countries, including those of the Maghreb;

3. Maintaining its strategic protection of Israel, both through diplomacy and the promise of resupply in the case of war.

European countries generally share the first two objectives, and are supportive of the special role the U.S. has taken with Israel. In addition, they are perhaps more concerned than the Americans about:

1. Stopping the flow of illegal immigration from the south-not just because of the possibilities that terrorists may be embedded in that flow, but because of their own difficulties in absorbing immigrants into their work forces and social support structures

2. Controlling smuggling

3. Protecting oil and gas routes, including pipelines

4. Resolving disputes over fisheries

5. Mitigating threats to the environment, including in the maritime areas.

The European countries have also long had special relations with the countries of the Maghreb: France with Morocco, Algeria, and Tunisia,

and Italy with Libya. They have wanted to help as they can (and more than the United States) to prevent internal conflicts in those countries and to find ways for them to function in the international economy.

These two differing sets of objectives reveal that the U.S. has taken a more general strategic approaches to the region-providing stability and preventing conflict and the movement of terrorists, in addition to the difficult task of stopping the mysterious, low-level, flow of materials that may be useful in the proliferation of nuclear and chemical weapons and the missiles that would carry them.

The U.S. for most of the last several decades has taken the main responsibility for bringing the Israelis and Palestinians together to find ways to live in peace, in addition to being the only external supplier of major arms to Israel. It wants a functioning, democratic Palestinian state that can provide a good life for its people-but only if it is not in constant war with Israel.

The U.S. also uses the Mediterranean as a major transit route for its forces to get to the Persian Gulf and to the continuing conflict in Iraq. There are no real threats to their transit, but the Mediterranean ports are convenient calling places for the ships and their crews while transiting, especially compared to what's available in the Persian Gulf. Ever since the bombing of the USS Cole in Aden in 2000 and 9/11, the U.S. has been particularly concerned with arranging force protection for itself in these ports. The interesting factor in arranging this force protection with local authorities is it takes the U.S. beyond mere navy-to-navy interactions to interactions with a variety of local authorities. While it may be complicated to do so, the net result is even wider relations between the U.S. and the host countries.

On the other hand, the set of concerns shows that Europeans—

— if we can be so bold as to observe and summarize their "views"-we are really groping here and always want feedback as to whether our perceptions are right—it is always quite presumptuous for us Americans to lay down what we think others think; we are often wrong, and certainly don't get the nuances or political complications right—

—(all of whose views vary due to their local circumstances and politics with their own people) deal with each other and with the non-European littoral countries of the Mediterranean in more detailed ways connected to theirs and the other countries' economies, social structures, job markets, and trade, to include the flow of energy resources.

Except for the Norwegians' brilliant intervention and mediation to bring about the Oslo Agreements on Israeli-Palestinian peace back in 1992, the Europeans have tended to leave the hard grinding on the Middle East peace process to the Americans. But I regretfully observe that the present American Administration has really neglected that process and has treated Syria as practically another member of "the Axis of Evil." There has been some hope lately that the renewed shuttle diplomacy of U.S. Secretary of State Rice may get the process moving again.

Whether this lack of progress in the peace process aggravated the July-August 2006 war between Israel and Hezbollah is something that can be discussed. A common perception at the time was that the U.S. was too slow in supporting the quickest possible cease-fire, possibly in the hopes that Israel would "defeat" Hezbollah. Upon the achievement of the cease-fire under UN auspices, Italy and France stepped forward to provide the larger part of the forces for the expanded UNIFIL. The truce has been holding since then, thank God. Hezbollah has not attacked the peacekeepers, but Hezbollah has also not been disarmed, nor is anybody at all going to try to disarm them (as was foreseen).

Europeans are the prime movers on any resolution of the long-standing partition of Cyprus, especially as both Cyprus and Turkey negotiate for membership in the EU.

The United States is certainly concerned with constructive relations between the European and Maghreb countries, and the resolution of the Cyprus situation, too. It has a big stake itself in the smooth functioning of the global economy-partly because it is such a strong contributor and partly because the lack of conflict means that commerce can proceed without disruption-to the benefit of everyone. After all, commerce is a non-zero-sum game-everyone benefits-whereas war is zero-sum: there have to be winners and losers.

Sometimes the United States conveys the impression that it is interested only in "hard" power, i.e., the use of force or the threat of force to make desirable things happen in world affairs (and not only for itself, but for its allies as well, and for the general good of civilization). The Americans fear that if initiatives are not backed by force or the threat of force that recalcitrant participants will never agree on anything or take any conciliatory actions.

But it is very important to note that much of the preceding discussion of European and Mediterranean security, or of the differences between Americans and Europeans in their approaches to current problems and issues, is not about using military force to make some other entity do what the wielder of such force demands. Yet what is not military force is called "soft power," that is, all that is not hard power is soft power, and all that is soft power is not hard power.

This dichotomy is false. It reflects the classic logical fallacy of the excluded middle, that is, that "all that is not A is B." That is not true. Rather, the logicians tell us that all that is not A is simply "not A"-it conveys no description of the "not-A" at all. Let us face it: the normal way of doing international business is by dialogue, by negotiations, by talking to one another. Things of value may be exchanged in this process, whether goods, money, mutual hands-off agreements, or whatever. It may be of value simply to continue talks. Nothing can come of talks if there are no talks. In sum, it is possible to say that most of life proceeds without the invocation of hard power. Does this make most of life "soft power"? No, it is life itself. The American government may look like it is more prone to use force than other countries, but as a matter of fact American leaders and elites more often refer to the use of force as "a last resort."

The main point would seem to be that action by governmental authorities, whether in a country's public life or in international affairs, ranges across a spectrum from simply working things out with "the other side" to the unilateral use of force. The extremes may be from "no action at all" to "the use of force," but, given the enormous number of international transactions that take place, the extremes the are the rare cases.

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In fact, the utility of military forces in most of the measures we have been talking about in this paper do not involve shooting or even coercion. Many of the military measures we talk about in this collection of papers actually fall into the category of non-use of force. Does that make military patrols, military exchange of information (though information has become more and more a national-level matter, not exclusive to the military), military dialogues on how better to coordinate and operate together, all "soft power?" Why not? Not only do they improve military-to-military relations among friendly countries, but they also stabilize the situation.

The fact is that the people who do these things day-by-day never think of such distinctions. They do their jobs, whether in military uniforms, police uniforms, or civilian mufti. And they all have civilian masters, for it is hard to find any country run by a military man or junta these days (even though monarchs may wear military uniforms, and Presidents Bouteflika and Mubarak wear mufti).

The activities by the military we have described in this paper, however the differences between Americans and Europeans might be shaded, take place day-to-day. These continuous low-grade activities are important. If there are no explosions, no shooting incidents, we may claim that we all have been contributing to maintaining peace, commerce, and human discourse.

I am reminded of the time in Los Angeles when some media program took a bull to visit a china shop to see what he would do-now there's the threat of hard power for you! In actuality, the bull was well-behaved, didn't break a thing, but he did make an awful mess on the carpet. Now that's soft power!

But there are disruptions that affect what we think of the generally good security situation in the southern European and Mediterranean area

The first is the U.S. war in Iraq, that is, the war of what no longer seem to be Iraqis, but all their sects and tribes against one another and against the United States. This has drawn the attention of the United States away from just about everything else and consumes its resources-although the U.S. has been a stalwart participant in Opera-

tion Allied Endeavor in the Mediterranean. And if it all collapses, or if the U.S. were to leave Iraq precipitously, we all can imagine dire consequences-implosion of Iraq, followed by an ex-plosion affecting the rest of the region, just like a plutonium nuclear bomb.

And then there was the Israeli-Hezbollah war, which shocked everybody, including Hezbollah themselves-they were just out to do a little kidnapping. They thought they would kidnap a couple of Israeli soldiers and trade them for all the Hezbollah operatives Israel had captured over time. They were then surprised that Israel over-reacted. We in the U.S. are tending to accord the Islamists of the Middle East, whether Sunni or Shia, greater understanding of us than we of them, having great ability to get inside our decision loop, etc. But they have obviously not taken the trouble of understanding the Israelis. Their neighborhoods were smashed. Those neighborhoods have hardly recovered. The Israeli economy has recovered fully, however Hezbollah and others around the world may speak of Israeli "defeat" and "disgrace."

But the 34-day war between Hezbollah and Israel suddenly meant that Iran was throwing around some of its oil money, along with Ahmedinejad's rhetoric in support of Hezbollah, to include weapons. Syria also transferred weapons from Russia to Hezbollah. The fact that Hezbollah is now an "organic" political power in Lebanon and will not disarm further complicates matters. Moreover, no one is discussing, let alone proposing, ways to disarm or stop the re-arming of Hezbollah.

This also brings us back to the Arab-Israeli peace process-complicated by the low-level conflict that continues between Israel, the Gaza Strip, and the West Bank, now further complicated by the civil conflict between Hamas and al Fatah in those Palestinian areas. First, the U.S. and Europe must cooperate to find a solution. U.S. today is politically more receptive to European influence than in recent years. The Europeans just need to give the U.S. more "carrots" so that those in the U.S. who favor cooperation with Europe have the ammunition necessary. Second, with the current impasses in negotiations, no one knows whether an incremental approach (small steps) or a comprehensive solution would work. Both parties are too traumatized for an

incremental approach and no one will voluntarily go first for the comprehensive solution. Israel must however offer Palestinians enough for them to provide a continuous and viable state with its flag in Jerusalem. The final criterion is that there should be peacekeepers on the ground buffering between Israel and the Palestinian state once there is a political solution-and these peacekeepers are more likely to be drawn from Europe; that is, if the Europeans could spare them, given their current contributions to UNIFIL and to Afghanistan.

Second, at the other end of the Mediterranean, there has been the sudden surge of refugees from Africa South of the Sahara. What accounts for this surge? For the U.S. struggling with Haitian boat people, it was not conditions in Haiti that drove them to build boats and sail toward America-after all, conditions have always been bad in Haiti and couldn't get worse-but signals from Haitians in America that maybe the American authorities weren't so vigilant about not letting more Haitians in. A year or so ago, Qaddafi had to kick 100,000 Africans out of Libya because his own people were getting agitated by the foreigners in their midst, non-Arabs, consuming their limited resources. Maybe those kicked out are turning up in the Canary Islands.

Third, the terrorist threat in the United Kingdom seems to have increased dramatically, with the London Metro bombings of last year and the arrest of those conducting a major plot to bomb airliners this year. That says the terror problem has migrated to inside Europe. Each European country has its own problems in this regard. Each in their own way is a magnet for immigrants-most of whom are from Muslim countries. Just about all are coming for jobs, not as terrorists. Spain draws people from Morocco; France draws from Morocco, Algeria, and Tunisia; Italy draws from Albania and from the Maghreb as well; Germany draws from Turkey as well as other Middle Eastern countries. It is said that each year 400,000 Pakistanis make their way back and forth between the UK and Pakistan. The internal conditions set by each country in Europe for immigrants become crucial. It does remind us of the diversity and ubiquity of people of Muslim origin and their being left in anomie in a betwixt and between world when they get to Europe, with its ancient class distinctions.

Beyond the problems of the Middle East and their possible spillover into the Mediterranean, or of the Muslim world in general, including the Maghreb, there is a much more general problem arising. It is a problem that Europe and America face in different ways-except that both sides are tangled in the same market. That problem is one of the supply of energy, and of oil and gas in particular. And it brings Russia back into the picture-especially for Europe. Russia has been neglected while NATO and the EU have expanded. There's lots of talks about the expansion of pipelines in the northern belt and the southern belt, in part because Russia, in a snit about Ukrainians thinking they are a separate nationality (in my brief encounter with the Ukrainians, they certainly think they are), are yet now stuck with 80 percent of their gas transiting Ukraine to get to Europe. There-fore, they are looking for ways to bypass Ukraine (and Belarus), whether through the Blue Stream gas pipeline connection to Turkey and then to connecting pipelines to southern Europe, or down through the Baltic Sea to Germany.

## Conclusions

Europe is otherwise peaceful and secure, especially if Bosnia and Kosovo continue to avoid the outbreak of conflict again. The Medi-terranean Sea lies between Europe and disorder in the region, except as people from Islamic countries move as individual migrants into the European countries, where just about all are seeking jobs, but a few are fleeing either oppression or otherwise unsatisfactory opportuni-ties in their countries of origin and thus are possible recruits to ter-rorism. The Maghreb countries have stability at the moment, though it is tenuous, given the continuation of essentially autocratic regimes and the rise of Islamic groups. Incidents in Morocco and Algeria in April 2007 indicate that their security is not to be taken for granted. The status of Cyprus is still up in the air. For a while, it looked like some progress in ending partition was being made, but it has once again stalled. The Levant at the eastern end of the Mediterranean is in turmoil, as it has been for decades-and the presence of Iran has practically extended to Lebanon. So the threats to Europe are not classic military threats, but the spread of disorder from elsewhere,

especially through the movement of individuals from Islamic countries.

We have said that the distinction between hard and soft power is a false one, especially in the current age. Rather, the relations between states and the relations between states and people-within a country and with immigrants, as characterizes the evolution of global movements at the current time-fall across a spectrum from hard to soft. The cooperation in security at the present juncture in history in the region really lies in the middle of the spectrum. At the very hard end, the conflicts between the Israelis and their neighbors are at a continuous low level and flare up badly only from time to time, as in the 34-day war between Israel and Hezbollah in July 2006. At the other end of the spectrum, economic relations between the countries to the north and the countries to the south are not as extensive as those within the north-except for shipments of oil and gas.

Back to the hard end, within countries there are the sporadic terrorist incidents, representing political unrest in the south and spillovers of terrorism to the north. They are handled by police and carabinieri as well as the customs and shore patrols that may intercept boat people. For the regular militaries, their activities are just about all in the middle of the hard-soft spectrum: the naval patrols in the Mediterranean and peacekeeping in the Levant. Hopefully, they will not have to do any shooting, and their "kinetic" power will be kept in reserve. Now, both the U.S. and European countries are engaged in a shooting war in Afghanistan, far away from Europe and the Mediterranean.

For the United States, it is in some ways a constant visitor, as it has been since shortly after World War II. But it has had a stabilizing and a crystallizing role, whether urging the formation of Operation Allied Endeavor in the Mediterranean, participating in its surveillance activities, or in its continuing critical role in mediating peace between Israel and the Palestinians, or in its continuing presence as part of the MFO (Multinational Force and Observers) in the Sinai, and in its membership in NATO, including the filling of positions of senior commanders in the Mediterranean. Its naval ships transiting to the Persian Gulf is also a reminder of the generally stabilizing role the U.S. serves. All these roles, too, lie in the middle of the spectrum from

hard to soft, from soft to hard. The U.S. is, of course, bogged down in Iraq and this is a distraction at the highest levels. Intermediate level officials are sustaining relations with our European partners nonetheless.

# The roles of multilateral institutions and organizations in maintaining security in the Southern European and Mediterranean Area

By Captain Thaddeus Moyseowicz, USN (Retired)

## I. Why multilateral institutions or organizations?

Multilateral Organizations have been an integral part of the international system since the end of World War II. Beginning with the signing of the UN Charter in 1945, a number of such voluntary associations between nations have come about, each for different reasons. To name a few, the UN, NATO and the EU are but three of these Multilateral Organizations. Although other Multilateral Organizations exist, the latter three can reasonably be characterized as forming the "Big Three" of the post World War II order, particularly when it comes to the security of Southern Europe and the Mediterranean area. More important, these organizations are, on balance, acknowledged to be generally "effective." The participating nations show no sign of wanting to abandon them; quite the contrary—the distinct trend is to try, if not to strengthen them, to at least make a concerted effort to keep them as real "players."

Why Multilateral Organizations? The organizations mentioned each had different reasons for coming into existence:

- The UN, patriarch among modern Multilateral Organizations, came into being in the aftermath of the greatest war ever for the specific purpose of preventing war and otherwise fostering the rule of law among nations.

- NATO was created for the specific purpose of deterring war against one adversary, and, if deterrence failed, wage war

against that adversary (or, in the pithy words first enunciated by the first NATO Secretary General, Lord Ismay, and repeated by the late Manfred Woerner, that NATO was designed to "keep Germany down, Russia out and America in").

- The EU, from its economic beginnings in 1951 as the European Coal and Steel Community, has become Europe's attempt to create its "more perfect union" and otherwise consign to the dustbin of history the unedifying spectacle of two unimaginably bloody and European-born wars within the last century.

Each of these Multilateral Organizations has mutated and otherwise evolved since their respective inceptions in order to adapt to changing world circumstances. Each has had mixed records of success (the rest of the sly Woerner quote is "Two out of three isn't bad"). Each has its detractors, but, as already mentioned, the consensus seems to be that each is a Net Positive Good. And each remains a Work in Progress.

So, to answer the question, "Why Multilateral Organizations?" in addition to their historical reasons for being, we can say they have each broadly fostered three important concepts within the International Community:

- Morally legitimizing action through the collective will of the membership;

- Physically strengthening action through the collective will and capabilities of the membership;

- And finally (and of increasing importance), sharing the burden for action collectively among members.

Since this paper is part of a bilateral collaborative project between Italian and American think-tanks, it is only fair to note that these concepts have different resonance on each side of the Atlantic.

Generally speaking, European publics are much more demanding than their American counterparts that transnational use of force (or suasion backed by threat of force) contemplated by their policy makers have the sanction of internationally-recognized legitimacy. On the issue of burden-sharing, it is generally more difficult for Euro-

pean political leaders to obtain support from their institutions (and voters) for the costly burdens of taking such actions, even when international legitimacy has been obtained.

On the American side, even though several recent U.S. government policy actions have been taken in apparent disregard of the "principle of obtaining international legitimacy," it is fair to say that seriously attempting to obtain international support for U.S.-inspired or desired policy actions remains a key element of the U.S. policy process.

## Multilateral organizations and security

Each of the three Multilateral Organizations previously mentioned (and we will discuss several others in the course of this paper) has its own security component. For current purposes, by "security component" we mean the ability to call upon members' organized military forces, place them under that Multilateral Organization's banner, deploy them, and control those forces through some sort of organizational command structure. Only one of the three—NATO—is exclusively "about" security in terms of structure, role and orientation. Of the three, only NATO and the EU have in place standing military staffs (and, of those two, NATO's is by far the most robust, although NATO's staffing structure is nominally at the EU's disposal). Of the three, only NATO has in place a standing system of military command and control.

"Security" is not, of course, entirely synonymous with the creation, maintenance and use (or threatened use) of military force. Multilateral Organizations clearly can and do contribute to security by other means. The EU has deployed several police-type assistance missions. The UN's Food and Agriculture Organization (FAO), has, in the broadest of senses, a "security" mandate, inasmuch as food shortages in the world ineluctably are a direct cause of insecurity, which, in turn, is likely to require response by "security" forces. We will, elsewhere in this paper, address "security" in its non-military meanings, but there are sound reasons for initially concentrating upon the more traditional meanings of the term.

## II. Multilateral organizations and security in Southern Europe, the Mediterranean and the impinging Middle East: a brief history

It is very useful to briefly review the historical evolution of the "Big Three" and selected other Multilateral Organizations' involvement in the security of the region. The following brief chronologies will also mention some security-related events in the region that were not the subject of these Multilateral Organizations' involvement or response. These are mentioned both as matters of historical record and as practical illustrations of the limitations of such organizations.

### Let's begin with the activities (or non-activities) of the oldest MLO—the UN:

- 1947: A UN Security Council Resolution partitions Palestine, which leads to the creation of the State of Israel (and thereby directly involves the UN as the premier Multilateral Organization in the birth of the longest-running security issue in the region).

- 1956: Suez Crisis: UK, France (both NATO members) and Israel act together (outside UN & NATO frameworks—a "Coalition of the Willing?") to attack Egypt; U.S. forces them to stop; UN "picks up the pieces" and institutes its first-ever peacekeeping operation (UNEF I; 1956-67; the initiative in proposing UNEF earns the Canadian Lester Pearson the Nobel Peace Prize).

- 1954-62: Algeria (not a crisis responded to by the UN, but mentioned because it happened in the region; a UN Security Council member was involved; like Suez, Algeria was a "colonial legacy," and for that reason France could still claim a sovereign role; the crisis was not responded to by the UN).

- 1958: U.S. unilateral intervention in Lebanon (again, not a UN action, however, UN again "picks up pieces" with UNOFIL). (Incidentally, the intervention was very peaceful, at least for

U.S. forces, with only one U.S. serviceman killed in action and three others in accidents).

- 1967: The Six Day Arab-Israeli War. Egypt's expulsion of UNEF I was an indication that war was at hand. There was a considerable UN Security Council debate; it was major crisis for the U.S. and the USSR; but the debate over the war was essentially made moot by the rapid Israeli victory.

- 1973: The Yom Kippur War. There was no substantive UN intervention during the war, but UNEF II was established in 1973 to monitor the truce and UNDOF (UN Disengagement Observation Force) was further deployed in 1974. The war restored Egypt's confidence, which permitted Sadat to go to Jerusalem, which then led to the Camp David Accords in 1979. A Multinational Force and Observers (MLO) in the Sinai was also set up as part of the Camp David Accords. This series of events marked the end of combined Arab war operations against Israel.

- 1974: Cyprus crisis (between Greece & Turkey, both of whom were NATO members); UNFI established to maintain the "Green Line" truce and continues to this day.

- 1976: Syria invades Lebanon, stays on until 2005 as satrap; no UN action.

- 1978: Israeli invasion of Lebanon; a UN Security Council Resolution demanding that Israel withdraw was issued; Israel withdraws (but leaves Lebanese proxies in place) and UNIFIL established to monitor the truce.

- 1982: Israel again invades Lebanon; stays on in South Lebanon in a "security zone" until 2000.

- 1982-83: A Multi-National Force (MNF) composed of troops from the U.S., France, Italy, and UK deployed to Lebanon to separate the Israelis and Lebanese. It was not a UN response, but is mentioned here because it was created since UNIFIL was inadequate for the task and was restricted politically in its rules of engagement. The U.S. and France withdrew after their barracks were struck by Shia suicide bombers.

- 1991: The UN Security Council creates MINURSO to supervise a cease fire in the Western Sahara following nearly 20 years of skirmishes there between the Moroccans and the Algerian-supported Polisario.

- 1991-present: The implosion of Yugoslavia leads to a series of Balkan-related UN operations, including UNPROFOR, UNCRO, UNTAES, UNPSG, UNPREDEP, UNMOP, UNMIBH, UNMIK; (UNPREDEP was a preventive, not crisis response, deployment of troops to the border between Macedonia and Kosovo).

- 1991-95: Civil War in Bosnia & Herzegovina. UNPROFOR eventually grows to 38,000 troops. UNPROFOR (and the EU) attempted only feebly to restore peace and stability.

- 1993: A UN Security Council Resolution declares Srebrenica a protected zone, but in May 1995 UNPROFOR peacekeepers were taken hostage. The Srebrenica massacre followed in July 1995 as Dutch troops stood helplessly by. This was the nadir of UN peacekeeping in the region: "Peacekeepers with no peace to keep."

- 1999: Kosovo: Following the failure of the Rambouillet talks and 78 days of NATO bombing, President Milosevic finally agreed to remove Serbian forces from Kosovo, and a UN-approved peacekeeping force (KFOR) moved into that province, where it remains to this day.

- 2005: Syria withdraws from Lebanon under combination of Lebanese, international community pressure; UNIFIL remains in place, however, unable to interfere in Hezbollah preparations for assaults on Israel.

- 2006: In a raid, Hezbollah seizes two Israeli soldiers and kills three others. Israel attacks and invades Lebanon. The UN Secretary General calls for a "robust" peacekeeping operation. UNIFIL augmented (now up to ~8,700 ground forces), to accompany Lebanese Army units into southern Lebanon, but nobody would dare to undertake to disarm Hezbollah.

Concerning the UN role in the security of the region we are considering (i.e., Southern Europe/Med/impinging Middle East), it is important to note that the UN has global responsibilities. Many other security-related crises requiring some sort of UN response occurred in other parts of the world during the above period.

Notice that through 1983, the incidents that caused UN interventions (or others substituting in the absence of UN action), were mostly about the situations between Israel and its Arab neighbors. A relatively quiet period for security in the region existed from 1983 through 1991, even though there was a severe civil war in Algeria and several incidents involving Libya. But these did not lead to any multilateral action.

Then the period of the 1990s was dominated by the series of conflicts in the Balkans, with its alternations between UN and NATO action, finally settled by UN ratification of NATO peacekeeping there.

Now, in 2005-2006, the Middle East section of the region flared up again, resulting in the installation of a substantially augmented UNIFIL force in southern Lebanon. The Balkan matters were confined to the region, to Europe. But the latest incidents in Lebanon meant that now the governments in southern Europe and around the Mediterranean had to take account of interventions in the region from as far away as Iran.

## NATO's involvement in the region

**Overview.** In the 57 years of NATO's existence, its members have usefully spent the time in developing a full panoply of military operational organizations, command & control, consultation mechanisms, standardization, procedures, common doctrine, infrastructure, cooperation, and frequent and robust exercising among the armed forces of member nations. The Mediterranean Sea was a major maritime theater of Cold War confrontation between the Warsaw Pact—represented almost entirely by Soviet ships—and NATO. Five of the founding or early members of the Alliance (UK, France, Italy, Greece, and Turkey), joined in 1982 by Spain, are physically located on the Mediterranean littoral. The UK might be included by virtue of its Gibraltar, Cyprus and past Suez and Malta holdings—all except Gibraltar and

the UK's "sovereign base" in Cyprus were lost by 1964. Similarly, founding member France exercised sovereignty over significant non-French portions of the region until Algeria's independence in 1962 (Morocco & Tunisia had become independent in 1956).

Some of the events that characterized NATO's evolution as a multilateral organization are described below:

- 1952: Greece and Turkey were admitted to NATO. It was a stroke of genius to admit these two bitter rivals to the Alliance—and (except for one brief period mentioned below)—keep them in. It has been pointed out, though, that Greece and Turkey have almost felt freer to confront each other since they joined NATO, knowing that NATO would intervene to reconcile them (the NATO Secretary General was a crucial mediator in the Cyprus crisis).

- 1954-62: The bitter Algerian struggle for independence from NATO member France; French actions were not endorsed by NATO as a collectivity, but it was a distraction for France from NATO affairs. After General DeGaulle took over firmly in France, he asserted some detachment from NATO affairs, withdrawing France from the Integrated Military Organization (though military cooperation continued) and asking that NATO commands be relocated from French soil, which they did in 1967.

- 1956: The Suez Crisis, which we have already mentioned in the UN discussion. NATO members France & UK acted without reference to the Alliance. Then NATO member U.S. strong-armed France and UK (despite their on-the-ground military successes) to withdraw, arguably driven primarily by the overall need to maintain NATO focus on the titanic confrontation against the Soviet Union. There was the incongruity of the violation of Egyptian sovereignty by two Western powers juxtaposed with the Soviet intervention in Hungary shortly afterward. Indeed, Khrushchev is reported to have held up the Soviet intervention in Hungary until after the Suez crisis passed because he feared that the forces of those two NATO members were so mobilized for Suez that they could have switched over to rescue Hungary.

- 1967-1974. The coup by the Greek colonels led to Greece being generally shunned in NATO meetings across that period. The other NATO members brought pressure on them to shift back to civilian rule, which they eventually did.

- 1968: The Soviet invasion of Czechoslovakia in August 1968 to quell "the Prague Spring" led to the first and only NATO execution of alert measures (at the lowest level—Military Vigilance), as the Warsaw Pact moved around elements of 25 divisions.

- 1972-1988: NATO engaged the Warsaw Pact in the MBFR negotiations (Mutual and Balanced Force Reductions), which did not result in any reductions, but had the result of keeping up the existing force levels on the continent across the entire period. Upon MBFR morphing into CFE IN 1989, the solidarity of the NATO participants was total, while the Warsaw Pact members, as their Pact fell apart, were squabbling with each other.

- 1974: The independence of Cyprus and its division into Greek and Turkish sectors caused perturbations in Greek and Turkish NATO participation in alliance affairs. The U.S. imposed an embargo on its military assistance to Turkey, which lasted until 1978.

- 1989-91: Cold War ends. Soviet Union dissolved. Germany was reunified, and the reunified Germany remains in NATO. NATO continues as the Warsaw Pact dissolves.

- 1991: NATO Rome Summit: NATO Heads of State & Government agree to a New Strategic Concept; NATO is no longer to be limited by mandate to strict "collective defense," though language permitting it to conduct "out of area" operations remained vague.

- 1991: Disintegration of the former Yugoslavia begins; the UN retains the lead at peacekeeping, despite some effort among the European nations to involve the EU.

- 1994: NATO created the Partnership for Peace as a way to provide a kind of associate membership for the former Warsaw

Pact countries and to help them to adjust to democratic rule, but then it soon became a vehicle for at least the Visegrad countries (Poland, Czech Republic, Hungary) to make preparations for full NATO membership.

- 1994: NATO creates the Mediterranean Dialogue.

- 1995 (July): the Srebrenica massacre of Bosnians by Serbians galvanized Western policy makers and publics into demanding a better peacekeeping effort; limitations of the "neutral" peacekeeping of UNPROFOR were exposed, including the division of authority between its commanding general and the civilian UN representative (a Japanese). NATO drew up plans to evacuate UNPROFOR units, anticipating that they would be attacked by the locals upon their withdrawal.

- 1995 (late August): A Serbian mortar attack on Sarajevo market killed 38 civilians; this precipitated NATO's three-week air campaign (Operation DELIBERATE FORCE); the campaign was launched with UN approval (the reason cited by NATO was that the Bosnian Serbs had yet again violated a UN Security Council Resolution). DELIBERATE FORCE, coupled with a successful ground campaign by the Croats and Bosniaks that drastically reduced the amount of territory occupied by the Bosnian Serbs, led to peace discussions in Dayton, Ohio, USA (November, 1995). The "Dayton Accords" were signed in Paris in December.

- 1995-2004: NATO forces heavily committed to peacekeeping in Bosnia-Herzegovina (first, as IFOR; then as SFOR); SFOR was dissolved only in December, 2004).

- 1999: March-June 1999; following the failure of the Rambouillet talks, NATO conducts Operation ALLIED FORCE (a 78-day air campaign) against what was left of Yugoslavia (i.e., Serbia-Montenegro, but essentially to send a message to President Milosevic) in response to the crisis in Kosovo.

- 1999-present: NATO forces have been heavily committed to peacekeeping in Kosovo (as KFOR). Other countries, notably Russia, joined as well, under the UN mandate.

- 2001-03: There were three small NATO operations in Macedonia (Operations ESSENTIAL HARVEST, AMBER FOX, ALLIED HARVEST). Unlike NATO operations in Bosnia and Kosovo, which began with the active use of NATO force (i.e., with air strikes, as opposed to invading ground forces), NATO intervention in Macedonia was purely preventive—keeping Macedonians and Albanians apart, though not unlike the peacekeeping operations in Bosnia and Kosovo.

- 2001: NATO invokes Article 5 ("an attack on one is an attack on all") after the 11 September attacks on the U.S.

- 2001 (6 October)-present: NATO launches Operation ACTIVE ENDEAVOUR in the Eastern Mediterranean. This was a direct response to the 11 September events. The operation has been conducted under the Article 5 umbrella and provides for the monitoring of shipping traffic in the Mediterranean. The operation expanded and evolved, to include the Strait of Gibraltar escort missions (beginning March, 2003) and coverage through the entire Med (beginning March, 2004).

- 2001-present: high demand for NATO AWACS coverage of "high visibility" public events conducted in regional member nations (e.g., a royal wedding, the Greek and Italian Olympics).

- 2002: Prague Summit and the creation of the NATO Response Force (NRF; its full operational capability was achieved only this year).

- 2004: NATO, at member Greece's request, provided considerable security augmentation in support of the Summer Olympics in Athens.

- 2006: NATO provides logistics support to African Union peacekeepers in Darfur.

Unlike the UN, and despite the 2002 Reykjavik Summit's removal of geographical restrictions on NATO missions, the NATO members have not formally agreed that NATO should have global responsibilities. Nevertheless, it is worth noting that several NATO activities are now taking place beyond the formal NATO area. It has been difficult to find forces for these other activities because of restricted Alliance

attention and resources, including restrictions on sending draftees out-of-country. NATO's current heavy involvement in Afghanistan is the most noteworthy of the operations decided collectively. The Iraq Training Mission is a much smaller NATO activity, but continues. There have also been short-term "out of area" NATO operations such as those for Pakistan Earthquake Relief and Hurricane Katrina Relief, as well as other deployments of NATO AWACS.

Similarly, several NATO members currently have substantial forces deployed in a non-NATO operation outside the NATO area. The UK, Italy, and Spain have deployed forces to the Multinational Forces Iraq (MFI) operations. As with the above, these deployments are necessarily a tax upon overall Allied capabilities, i.e., resources committed to Iraq cannot be committed to NATO operations.

Finally, NATO has had an ability to attract substantial numbers of quality troop contributions from non-NATO nations to its peacekeeping operations in Kosovo. This is not always appreciated on the American side of the Atlantic. For example, 12 of the 37 nations having contingents in KFOR today are not NATO members. Some 18 percent of the total KFOR manpower providing security and stabilization in Kosovo today is provided by non-NATO contributing nations. While individual non-NATO nations have differing motives for contributing troops to NATO operations, the ability to have their forces operate within the framework of a "gold standard" international military organization of acknowledged effectiveness ranks high among the reasons they cite.

## The EU's involvement in Mediterranean regional security

The European Union unquestionably represents the largest multilateral coordination of defenses in the Mediterranean region. Spain, France, Italy, Slovenia, Greece, Cyprus and Malta are current EU members on the Mediterranean littoral. The remaining European nations of the littoral (Croatia, Albania, Montenegro, Turkey) and elsewhere in southern Europe (Bulgaria, Romania, Serbia, and Macedonia) strongly desire to join the EU defense cooperation initiatives, and are in various stages of the accession process to the EU itself.

"Security" is only one of several competencies the EU has been trying to organize. In several respects, it is the least-developed major competency of the EU, owing to its late birth (until the end of the Cold War, the European membership of NATO and the membership of the EU were one and the same). Unlike NATO, the EU also has police (vice purely military) capabilities that may be seconded from member nations to an EU command.

The sequence of events for a new and expanding role in security matters for the EU after the fall of the Berlin Wall, the end of the Cold War, and the dissolution of the Soviet Union may be listed at as follows (there may be omissions, but the list nevertheless demonstrates the extensive activities that have been conducted):

- 1991: "This is the hour of Europe, not the hour of the Americans" (Luxembourg Foreign Minister Jacques Poos, speaking as President of the Council of the European Union, on the occasion of the beginning of the Yugoslav Civil War in 1991).

- 1992-98: European Security and Defence Policy (ESDP), a major element of the EU's Common Foreign and Security Policy, evolves (preceded by adoption of Petersberg tasks by WEU, ESDI)

- 1998: St. Malo Anglo-French Summit; Blair, Chirac stated that the EU must have a capacity for autonomous action.

- 2002: NATO-EU Declaration on ESDP reaffirms assured EU access to NATO planning capabilities for EU military missions.

- January 2003-present; EU Police Mission to Bosnia-Herzegovina.

- 2003: "Berlin-Plus" arrangements provide the basis for NATO to support EU-led operations in which NATO is not engaged.

- 2003: (March-December); EU launches its first military mission, Operation CONCORDIA (to Macedonia). NATO assets and capabilities utilized. 400 soldiers from 26 nations were involved.

- 2003-4: Year-long EU Police Mission PROXIMA to Macedonia.

- 2004 (December)-present: EU launches Operation ALTHEA in Bosnia-Herzegovina as NATO dissolves SFOR; it consists of 6,200 troops drawn from 22 EU members and 11 non-EU contributors.

- 2005: EU Police Advisory Team deployed to Macedonia (follow-on to PROXIMA).

- 2005-2006: EU Border Assistance Mission at Rafah Crossing (Gaza) (EU BAM Rafah); 77 EU personnel monitoring operations at this border crossing point.

- 2006-present: EU Police Mission in the Palestinian Territories (EUPOL COPPS); 3-year duration; 33 EU policemen provided to assist Palestinian Authority in establishing sustainable and effective policing.

- 2006 (January): European Gendarmerie Force (Euro-GendFor) launched. France, Spain, Portugal, Italy, Netherlands participating. It is a corps, headquartered in Vicenza, Italy. Its purpose is to coordinate the use of European gendarmerie in crisis response during the phase between the end of military operations and the reestablishment of local civilian control.

The EU also has several ongoing police, justice, security sector reform, and military missions outside of the Mediterranean region (e.g., in Congo, Iraq, Moldova, Ukraine, and Indonesia).

EU membership is no longer synonymous with NATO membership. That said, EU forces are largely drawn from member nations whose forces are versed in NATO doctrine/procedures. Obviously, there are overlapping commitments.

The EU, unlike NATO, also contributes to regional security by being a major donor of financial and humanitarian aid (e.g., 55 percent of the Palestinian Authority's funding during the past decade was provided by the EU).

**Turkey and the EU.** This is a subject of immense significance for the future. We will address it in our conclusion.

## OSCE's involvement in the region

The Organization for Security and Cooperation in Europe (OSCE) advertises itself as "the world's largest regional security organization." Its membership includes all of Mediterranean littoral Europe and much of Mediterranean littoral North Africa (whose nations have "partnership" status). The OSCE traces its ancestry to the former "Council for Security Cooperation in Europe," a Cold War-era East-West forum. The current title was adopted after the organization's reinvention as an operational organization in 1995.

The OSCE boasts a particularly impressive "tooth to tail" ratio (only some 10% of its 3,500+ staff are headquarters personnel; the large majority of the remainder are in the field.

The OSCE is not a "Hard Power" organization. It is broadly concerned with such fundamentals of good governance as democratization, education, police training, border monitoring, judicial reform, anti-drug trafficking, and human rights. To achieve those broad goals, it has established field offices in selected nations to tackle elements of those goals in detail. Its local networks tend to provide an excellent finger on the local pulse.

The OSCE's only Mediterranean-region field missions are exclusively in the Balkans (Albania, Bosnia, Croatia, Montenegro, Serbia, Kosovo, and Macedonia). They complement the NATO and EU presence in those nations by helping to build institutions and aiding in post-conflict rehabilitation. For example, the OSCE is heavily involved in reform of the Bosnian defense establishment from a sound institution-building perspective.

The OSCE also hosts an annual Mediterranean Seminar (this year's was held on 6-7 November). One of the three agenda items was a discussion about illegal migration and the integration of legal migrants.

The OSCE is a worthy, "lean and mean" multinational organization that works hard to address the causes of insecurity. It delivers an outstanding return on investment. Unfortunately, the amount invested remains comparatively low (the OSCE's entire budget for 2006 amounts to 186 million Euros; in contrast, UNIFIL's budget for 2006-

2007 (unadjusted for UNIFIL's directed expansion) is some 73 million Euros).

## The Multinational Force & Observers (MFO)—Sinai

The MFO in the Sinai is the smallest multilateral organization actively providing security in the Mediterranean region. An independent international organization responsible for supervising implementation of the security provisions of the Treaty of Peace between Egypt and Israel, it became active in 1982. Its mandate is to prevent violation of the Treaty's terms through on-site observation and verification.

The MFO is headquartered in Rome, and has regional offices in Cairo and Tel Aviv. Its funding is provided by the U.S., Egypt, and Israel. Other nations can and do contribute. The MFO's annual budget is $51 million.

The MFO accomplishes its task with a military force of some 1,675 troops drawn from 11 nations (Italy is the only troop contributor from within Europe). Battalions are currently provided by the U.S., Colombia, and Fiji. The U.S. contributes about 850 troops. MFO personnel actively patrol in the security zones set up in the Sinai in accordance with the Peace Treaty.

The MFO has performed its mission for some 24 years. Attempts to do away with it have led to loud protests from those two nations since it was formally provided for under the Camp David agreement. In that sense, it is a uniquely firm commitment for the United States.

## Eurocorps

Eurocorps is a force drawn from the armies of France, Germany, Spain, Belgium and Luxembourg. It can notionally reach a strength of up to 60,000. It bills itself as a "force for the European Union and the Atlantic Alliance." Eurocorps has its origins in a French-German initiative to stake out the beginnings of a European defense and security identity.

Its member nations have stipulated that it can be made available to support other multilateral peacekeeping missions.

From 1998 until 2000, Eurocorps maintained a steady 450-man presence in support of NATO's SFOR.

In 2000, it proposed to NATO that Eurocorps would form the nucleus of KFOR headquarters. NATO accepted this offer. 350 Eurocorps soldiers served for some six months with KFOR HQ.

### Southeast Europe Brigade (SEEBRIG)

The Southeast Europe Brigade is a regional military multilateral organization. Forces are contributed by seven southeastern European nations (Albania, Bulgaria, Greece, Italy, Macedonia, Romania, and Turkey). SEEBRIG was established in 1999 by the Southeast Europe Defense Ministerial as a means of contributing to regional stability and fostering good will.

The Brigade headquarters is rotated to a different nation every four years. The current HQ is in Constanta, Romania. Command also rotates among the member nations.

The HQ is the only "standing" entity at the HQ. Forces are declared for SEEBRIG by member nations, and they frequently exercise together.

SEEBRIG is available for missions in support of other Multilateral Organizations. To date, its activities have been confined to exercises, with no operations yet conducted.

## III. What are the likely, near-term security issues to be confronted by multilateral organizations in the region?

It is time to define the near-term threats to security or other events in our region that will confront American and European decision-makers with considering some sort of response, diplomatic, humanitarian, or military, using the various multilateral security apparatuses we have discussed earlier.

First, crisis response (broadly defined as intervening to end conflict and to restore peace and build stability, as well as relief after natural disasters) remains a constant possibility, first in managing or contain-

ing the existing conflicts, and then to anticipate and cope with other conflicts that may arise in the region. It is important to note that post-crisis response remains an enduring (and taxing) competency for multilateral security forces—in other words, merely bringing a halt to the immediate crisis (e.g., slaughter in the Balkans)—has been shown to be not enough. And it is labor-intensive. Not only would Multilateral Organizations attempt to stop hostilities upon their introduction, but they may also may find themselves faced with years of what is at best "observation" duty and at worst long-term military occupation duty.

NATO's actions stopped the "hot war" in Bosnia in 1995; NATO forces finally left in 2004 and handed over their occupation duties to the EU that year (EUFOR, at present, deploys some 6,200 troops there). And in Kosovo, despite the low probability of Serbia attempting to reassert by means of force its sovereignty in what technically remains a Serbian province, experience has shown the continued presence of NATO forces there to be essential for continued peace and security (incidentally, EU Defense Ministers are considering reducing EUFOR in Bosnia from its current strength of 6,200 to 1,500; although Bosnia is not Kosovo, all indications are that such a reduction's timing will be predicated upon the perceived situation in Kosovo, i.e., the impact upon regional stability).

For all the talk about "transformation" of military forces on both sides of the Atlantic, we see from the multilateral experience that no technological panacea substantially alters the need for large numbers of "boots on the ground" when it comes to peacekeeping. The United States has been changing its view of what "transformation" is once it became clear that a huge insurgency, for which the U.S. had been unprepared, had arisen in Iraq.

The comparatively small UN peacekeeping operations in the Mediterranean region, that is, UNIFIL in South Lebanon, UNFI in Cyprus, and MINURSO in Morocco show no sign of being withdrawn. Moreover, as we know from this summer, UNIFIL has been significantly augmented by a large number of first-rate troops, especially from Italy and France, and even military engineers from Russia. Periodic attempts to do away with UNIFIL have now been replaced with a new

long-term mission that could get even more serious if Hezbollah, aided by Iran, were to start shooting at them. The MFO, another comparatively small operation (but one not under UN auspices) also shows no sign of withering away.

The simple fact is that solving security issues through the kinds of operations discussed above is rarely (if ever) a cut-and-dried process. Every situation is different, the political confrontations seem to go on forever, and multilateral missions and troops are likely to be present indefinitely—unless, as happened to the French and Americans in Lebanon in 1983, they were assaulted so badly that their governments decided to withdraw them forthwith.

## Are there any "hot war" regional crises looming on the horizon?

**Kosovo.** It is never possible to be entirely clairvoyant about such matters. Who foresaw that Slobodan Milosevic, who had already yielded to NATO in Bosnia in 1995, would decide to brazenly "ethnically cleanse" Kosovo, thereby inviting further armed NATO intervention? Answer: everybody, but as we can see, such a huge effort was required to mobilize both sides of the Atlantic for one mission—that is, Bosnia first—that the mission had to be "routinized" before the IC could even contemplate another, that is, in neighboring Kosovo.

Now Kosovo, already a ward of the International Community (IC), remains unstable and its political situation unresolved—not to speak of the near absence of an economy. The riots of March 2004 (which required a temporary augmentation of NATO occupation forces) are a reminder that many Kosovars remain unhappy with their region's current political "limbo" status and are unwilling to wait patiently and indefinitely for the IC's solution. Rumblings (veiled threats?) continue to emanate from the Kosovo Albanian majority that any political solution short of full independence will be ìunacceptable.î

The point is that Kosovo is a prime candidate for continued (and even increased) multilateral security forces' involvement there. There should be no wonder about this, but, in view of the new focus of NATO on the deteriorating security situation in Afghanistan and the huge continuing effort of the U.S. in Iraq, there might arise a tendency to try to patch together a political solution in Kosovo and then

divert troops from there—thus leaving a vacuum and tempting renewed war.

**Israel and its Neighbors.** The security implications of the ongoing conflict between Israel and its neighbors have already been mentioned, both in terms of historical chronology and as a trend. We see how, as recently as this summer, UN Security Council Resolution 1701 called for an increase in the size of UNIFIL from its previous level of about 2,000 troops to up to 15,000. Italy and France have been in the forefront of the response to the resolution. At this writing, UNIFIL now numbers some 8,700 "Blue Helmeted" peacekeepers. Despite suggestions by Israel, NATO did not consider participating in this peacekeeping effort. Given the close identification of the U.S. with NATO, and given the close bilateral relationship between the U.S. and Israel, it is easy to see why a NATO-flagged force is politically unsuited for such a peacekeeping role. The EU as an institution faced a manpower problem: its many dual-hatted NATO members were either already in Afghanistan or under pressure to increase their contributions there. Additionally, the EU's 1,500-man Battle Groups are neither yet fully ready nor available in the numbers required. Two key NATO (and EU) members, Italy and France, therefore volunteered to take the lead in shouldering this new burden.

**Darfur.** Worth mentioning briefly is the long-lasting humanitarian crisis in Sudan (Darfur). Technically speaking, being in sub-Saharan Africa, it is outside the scope of this paper. Yet anguished debate about Darfur abounds within the various multilateral councils and with Western publics at large. NATO has provided some logistics support to the small (7,000 man) African Union (AU) force trying to keep some sort of "peace" in a region not much smaller than France (the entire Sudan is some five times the size of France). It is not possible to say whether any precipitating act (like the Serb mortar attack on the Sarajevo market in 1995) will galvanize Western public opinion, which will, in turn, galvanize Multilateral Organizations to take decisive action, or whether we will see a repetition of the inaction by Multilateral Organizations and the IC that characterized the 1994 Rwanda genocide. Even if Multilateral Organizations are moved to want to take decisive action, the military resources may not be avail-

able from Europe to assist, and the United States has shown no great desire to intervene with its own forces.

## Terrorism

The second key security issue confronting Multilateral Organizations in the Mediterranean region today is terrorism. This is not a new phenomenon within the region. Italy, Spain, Greece and Turkey are all nations having recent (i.e., within the past three decades) first-hand experience of indigenous terrorist movements (e.g., Red Brigades, ETA, November 17th, Kurdistan Workers' Party). Islamic governments within the region, such as Egypt and Algeria, have had their own indigenous terrorist groups to contend with.

There is also the long-standing (and constantly evolving) issue of terrorism as an adjunct of the greater Arab-Israeli conflict. Terrorism has been part of this conflict since its inception. Despite a preponderant history of Arab-initiated acts, it has not been practiced exclusively by the Arab side (viz., Irgun's reprisal killing of two British sergeant prisoners in 1947, or the assassination in 1948 by Lehi of the UN Security Council's Palestine mediator, Count Folke Bernadotte).  Terrorist acts directly related to this conflict have, on occasion, spilled over into regional countries (e.g., the Rome Airport attack of 1973, or the Achille Lauro hi-jacking of 1985). In 1983, in Beirut, the U.S. and France obtained an advance look at what would become the terrorist attack defining our time—the first suicide bomber attack.

From our perspective, i.e., concern for Southern Europe and Mediterranean security, the flavor of terrorism which most concerns us today is the one we will narrowly define as Islamic-inspired, frequently operating outside of Islamic countries, not averse to the use of suicide attacks, and targeting (with great deliberateness) Western civilian populations. We are concerned, of course, with the internal attacks in places like Yemen, Saudi Arabia, and Jordan, and the large Al Qaeda presence in Iraq, but those incidences are beyond the question of what to do about terrorism in the immediate region.

The attacks on the U.S. of 11 September 2001 are the model (although 9/11 clearly had its predecessors in other "out of area" attacks, such as the 1999 Nairobi and Dar es Salaam embassy bomb-

ings). The Madrid train bombings (2004), the London subway bombings of 2005 and the plans thwarted in 2006 for airliner attacks all are part of the same phenomenon of bringing conflict directly to Western publics. The separate 2005 hotel bombings in Sharm el-Sheikh and Amman are more of the same (although the majority of victims were not Westerners, the respective governments of Egypt and Jordan are viewed as apostate by the Islamic movements we are discussing).

It would be very convenient—extraordinarily so—to attribute the particular brand of Islamic terrorism (and thus, the global threat that might reach to any of us) to a monolithic, centrally-controlled, ubiquitous and well-disciplined international movement, called "Al-Qaeda." Al-Qaeda clearly exists, and is known to have been responsible for several of the attacks recounted above. But "terrorism" is a tactic, not a uniform, exportable ideology, and the other defining characteristic of the current brand of global terrorism has been its agility and adaptability as it moves around the world—but in small cells, connected only by the Internet.

The current brand of terrorism has mutated to being "globally-inspired, but locally rooted." In this respect, the analogy with Marxist ideology and the movements it spawned may be useful. Soviet Marxism-Leninism, Chinese Maoism, post-Maoist Chinese Communism, Vietnamese Communism, North Korean and Albanian xenophobic "Communism," and Ugo Togliatti's Italian brand were all brands of "Communism"—yet each was quite different, and only the Chinese/Vietnamese version has persisted, and only in those two countries. Just as "Communists" might display certain family similarities, but otherwise be quite different from each other, Hezbollah, Hamas, the numerous brands of terrorism which make up daily life in Iraq, Chechen terrorists, Al Qaeda, etc., are quite different from one another.

Finally, it would also be convenient if we could link the current form of terrorist threat to a particular nation-state, but it is hard to do so. The Taliban-dominated Afghani state came closest to such a link by willingly providing a haven and protection to Al Qaeda prior to 9/11. The Taliban paid for this support by being driven from power by a U.S.-led coalition augmenting the existing Northern Alliance with

bombs. Taliban leaders may well have cheered the successes of Al Qaeda and the other "brothers" who were engaging the common "crusader" foe, in much the same way that U.S. Cold Warriors cheered essentially the same mujahadeens' successes against the Soviets in Afghanistan).

But it would be a mistake to therefore equate the Taliban with Al Qaeda, or to attribute the terrorism threat to the Mediterranean region to the machinations of one or two nation-state "sponsors of terrorism." Would that it were only so, because all of us could otherwise strike back at them directly. We need only look at the homegrown London subway bombers to see that this was not the case. If it were, the entire panoply of multilateral power, "soft" and "hard," could be deployed against that nation-state sponsor.

## How may multilateral organizations operate against terrorism?

Having thus narrowly defined terrorism (the one word, "terrorism" will henceforth remain our shorthand for our narrow definition) and agreed that it unquestionably poses a threat to security in the Mediterranean region, what may our Multilateral Organizations do about it?

First, NATO's ongoing Operation Active Endeavor (OAE) in the Mediterranean has been to date the principal multilateral response to terrorism by our organized militaries (the greater part of tracking and arresting terrorists has been by the police and secret services of individual countries in coordination with each other). OAE was directed by the North Atlantic Council consistent with the post-9/11 invocation of Article 5 of the Washington Treaty. It began in late October of 2003, and is intended specifically to provide a visible NATO presence in the Mediterranean and to demonstrate Alliance resolve.

Initially limited to the Eastern Med, OAE was expanded to cover the entire Mediterranean in early 2004. Its modus operandi is the conduct of maritime patrolling by Alliance ship and air assets, with a major object being the establishment of an accurate, relatively real-time data base of Mediterranean shipping activity. In addition to being visually sighted, merchant vessels are queried as to basic data (name, registration, cargo, Master's name, last port visited, where

bound to). Over 79,000 merchant vessels have been monitored since the start of the operation. Additionally, over 100 vessels have been subject to compliant boarding in accordance with the rules of international law.

Although two ships have been the subject of terrorist attack (notably, USS COLE in Aden in 2000 and the M/V LIMBURG off Mukkala in 2002, i.e., both in Yemeni waters), the OAE does not, as a primary mission, seek to protect Mediterranean shipping from terrorist attack. A subset of the operation carried out from 2003-4 conducted some 488 escorts of high-value, vulnerable shipping through the Strait of Gibraltar îchokepoint.î

Rather, the operational value of OAE has been two-fold:

- First, it has created a comprehensive intelligence picture of "what floats" in the Mediterranean on any given day. Given that the seas are the "highways of all nations," governments have feared that the terrorists might employ maritime means in the Mediterranean to move personnel or materiel, or even to attack ships, like the Palestinian Liberation Organization did against the Achille Lauro in 1986. Intelligence requires data, and the OAE has collected and processed shipping data to develop the picture of normal shipping so that it may be possible to spot anomalies.

- The second accomplishment of OAE has been to provide the deterrent effect of the "cop on the beat." It is obviously impossible to prove the efficacy of this presence, but at least there have been no incidents.

OAE has had two other unplanned, but useful, side effects. First, the opportunity to participate in OAE was extended in 2004 to Partnership for Peace and Mediterranean Dialogue nations. Second, the data "swept up" in the course of OAE patrolling have also been useful in countering arms, migrants and other smuggling. Intelligence about the latter two, we will see, is of particular interest to those concerned with other Mediterranean regional security issues.

## The availability of multilateral forces

As noted earlier, the afterword to Chapter III of this paper noted that NATO commitments to any operations outside the Mediterranean region come from an essentially finite military resource pool. This same fact of life applies to Multilateral Organizations such as the EU or UN. The several thousand Italian and French troops recently deployed to augment UNIFIL are obviously unavailable for NATO or other UN tasking for the duration of their UNIFIL assignment. Although this is clearly "competition" for scarce resources, it is not "competition" for customers. There is plenty of security-related work to go around for Multilateral Organizations, and yet, as we have seen, Multilateral Organizations are not equally suited to take on all the tasks. There is a great need for far more ground forces in both Iraq and Afghanistan, and the world is lucky that even some have been made available to augment UNIFIL.

To summarize, we foresee a continued need for capable, deployable and available armed forces, able to be employed by Multilateral Organizations in crisis and post-crisis response. "Armed forces" can, in turn, be narrowed down to "ground forces." Although naval and air forces may occasionally provide useful niche capabilities in crisis response situations, the largest share of the burden, will, inevitably, fall upon ground forces. We define "Crisis Response" as a spectrum ranging from "shooting war" to "occupation/peacekeeping duty" to the "use of military tools for non-security matters" (e.g., airlift, engineers, medical personnel to respond to natural disasters). This need will not go away (notwithstanding a decreased incidence of state-on-state conflict in the region we are discussing).

## The involvement of other than military organizations

Until now, this paper has deliberately stressed the "military" aspects of multilateral organizations' abilities to respond to regional security challenges. As we have seen, the historical record shows that it is their military units that have been key to responding to the region's security issues. While these uniformed forces had been raised, trained, and equipped by their parent nation-states to engage similar uni-

formed forces raised, trained, and equipped by other nation-states, they have proved versatile in providing a policing function.

And yet these types of forces, whatever their great merits and abilities and utility, are simply not the security element of choice to deal with terrorism. Countering terrorism is, first and foremost, an intelligence competency. In that regard, OAE is very much an anomaly—a military operation delivering an intelligence product that may contribute to tracking terrorists, though they may not have done so explicitly to date. OAE's operational environment and international law and custom permit this type of overt military intelligence gathering on the high seas. However, the practice of terrorism has so far been almost exclusively accomplished on dry land.

Second, the targets—civilian practitioners of terrorism—are, by definition, foes not readily encountered or countered by conventional armed forces (we are not speaking about non-uniformed insurgents in a particular country like Iraq, if any country could possibly be like the current Iraq). Although armed forces may, in fact, have quite robust organic intelligence capabilities, these capabilities, because of the nature of military forces, are not optimized for the collection and analysis of most civilian-derived, terrorism-related intelligence. Even if they were, the employment of military forces against non-military— that is, civilian—personnel is carefully circumscribed in democracies and practically restricted by governments.

The purpose of this chapter has been to identify the near-term threats to Mediterranean region security. Terrorism is clearly such a threat, one that is not optimally countered by the prevalent capabilities of existing multilateral security apparatuses (in particular, by NATO, whose resources are invested primarily by the countries owning them in conventional armed forces).

# IV. Longer-term security issues

## Globalization

We come to a new complication to Mediterranean regional security. It is globalization, or the growth of an interdependent global econ-

omy, with associated recognition of common problems, by many countries around the world. There was a time when famine might affect whole parts of colonial sub-Saharan Africa. Or, as another example, China was wracked in the 1920s and 1930s by warlordism and war. The victims of either African famine or of war-torn China could be (and would be) expected to endure their miserable lots in their native lands. For one, adjacent localities were probably only marginally less miserable. For another, intense regional parochialism would ensure they would not be welcome in adjacent lands. Additionally, the available means of transportation—the victim's two feet—would not suffice to get the refugee very far. Finally, the extremely limited means of communication (and even more limited access to them) ensured our refugee had no idea that life might somewhere be better.

We now "Fast forward" into today's globalized world. Today, the "wretched of the earth" (to use Frantz Fanon's description) of even the poorest countries have access to transportation networks that can move them—at a price—anywhere in the world and to communications networks that move their words and finances at practically no cost. Shipping is no longer the monopoly of a handful of maritime nations.   Most shipping moves to and from the nations of the developed world. In southern Europe and the Mediterranean region, this includes the entire European littoral from Gibraltar to Thessaloniki or Haifa and Port Suez.

Thanks to modern telecommunications, there is no mystery to would-be migrants as to what lies in the developed world. I personally have chatted with Kenyan hotel employees who had up-to-the minute knowledge of the latest in English Premier League football; the same individuals' entire monthly income might pay for one night's accommodation in my Mombasa resort hotel. Illegal immigrants are typically charged stupendous prices by professional migrant smugglers to be moved. Yet the same "globalization" provides would-be migrants with the ready means to obtain these exorbitant sums, especially through Western Union remittances from relatives already "in" the West (compare that with Conrad's description in Typhoon of returning Chinese coolies having to physically carry their fortunes in silver dollars).

Illegal migration from without to the European nations of the Mediterranean littoral is the most visible aspect of the globalization problem. Incidentally, I offer no value judgment about illegal immigration and its social, political and economic effects upon the receiving societies; my point is that the affected states must respond to the uncontrolled nature of the problem (or face abandoning a major element of nation-statehood). These states rely heavily upon their warships, maritime patrol aircraft, and coast guards in attempts to interdict unwanted migrants before they reach European shores—thereby giving the issue a security component.

We have already seen how NATO's Operation Active Endeavor contributes to the intelligence gathering that assists in making such interdiction possible. Since Spain, France and Italy are signatories of the Schengen Agreement on free movement within the EU, but require passports and visas from non-members, the issue transcends those nations and also affects others in the old, prosperous "core" of Western Europe. It is little wonder that Spain (with strong endorsements by Italy, Greece and Malta) has attempted to involve the EU in the issue—so far with indifferent success (at last count, EU nations have contributed only two patrol boats and one airplane toward solving the problem, in addition to their contributions to OAE).

Globalization affects Mediterranean security in other ways. The Mediterranean has been a principal highway of international maritime commerce since ancient times, so it is no surprise that a significant volume of the recent logarithmic increase in world trade transits that sea. But changes in maritime and trade technology have created new security problems.

Containerization of cargo has revolutionized the shipping industry and, in an era of proliferation and terrorism concerns, led to serious concerns about our knowing exactly what moves in those containers. There is good news on this front. The comparatively new U.S.-initiated Container Security Initiative (CSI; begun in 2002) has caught on in the region (at last count, eight major Mediterranean ports—five of them Italian—participate in CSI). Although currently run on a bilateral basis, the EU and the U.S. Department of Homeland Security

have signed an agreement calling for CSI's expansion within the Union.

Trans-national crime and its subsets of drug trafficking and trafficking in persons have similarly ancient antecedents within the Mediterranean and are not, per se, consequences of globalization. But the tools of modern technology and the rise in demand created by globalization have both emboldened suppliers and facilitated this unlawful commerce. All is not on the side of criminals, of course; technology has benefited law enforcement and security organs. But the challenge and response dynamic inherent in all forms of free trade tends to favor agility on the part of the profit-maker, and not the state security apparatus (it was reported in 2001 that Albanian organized crime figures used stolen cell phones for one conversation—and then discarded them).

We began this topic by discussing uncontrolled migration and the security challenges of attempting to control it. What happens when the "wretched of the earth" fetch up on more prosperous European shores—and remain there, still comparatively "wretched" and un-integrated, within their new societies? Many migrants end up integrating and doing very well in their new societies (remember, Western Europe is a region in demographic crisis, so this source of cheap and willing labor is not unwelcome in some quarters). But the record seems to support that those who remain marginalized and otherwise not fully integrated into their host societies provide attractive recruiting prospects for the preceding threat we addressed—terrorism. It is thus alarming that we are beginning to see "home-grown" terrorists, born and bred in Europe.

That accelerated change caused by globalization has had security implications for the Mediterranean region is a given. Complicating matters is that these by-products of the globalization process are not purely security matters. Achieving EU consensus about what to do about migration, for example, is a competency to be established within the system of justice. The amorphous and multi-modal nature of globalization does not lend itself to ready quantification of the percentage of security interests in its by-products. Two things are certain, however. Globalization is here to stay because of the prosperity it is

bringing. Multilateral Organizations (and the policy-makers within them) do not yet appear to have taken full measure of its security implications, in part because, aside from illegal immigration and minor amounts of smuggling in the Mediterranean (as compared to the Persian Gulf, for instance), there has been a paucity of spectacular, media-worthy ìincidents.î It is difficult for rule-setting authorities to anticipate contingencies as opposed to correcting past mishaps.

## Nuclear Proliferation

A comparatively recent major threat facing Mediterranean regional security is that of nuclear proliferation. Since 1998, the five "long-standing" nuclear-armed states have been joined by India, Pakistan and North Korea. Israel has long been an undeclared nuclear-armed state. Finally, Iran's unfolding uranium enrichment program has caused alarm on both sides of the Atlantic.

Whether possession of nuclear weapons is morally right or not, there is general agreement that "The Five" exercised rigorous and meticulous control over both their arsenals and nuclear weapons technology. Even the collapsing Soviet Union retained iron control over its arsenal, and its successor state is doing the same, with great assistance in the security of its installations paid for by the U.S. Nunn-Lugar program. The Non-Proliferation regime the five have supported has led to several erstwhile aspirants voluntarily abandoning their nuclear weapons programs.

With the recent expansion of "the Club," the not-unreasonable fear arose that the new "members" might not be quite as assiduous as the older members in preventing nuclear proliferation. These worst fears were confirmed by the revelations, from the interception in 2004 of the merchant ship BBC China on its way to Libya, that the Pakistani nuclear technology entrepreneur Abdul Qatar Khan had, in fact, proliferated nuclear technology to Libya, Iran, and North Korea.

The fear, of course, is that terrorists with a proven willingness and ability to conduct operations deliberately intended to take thousands of civilian lives, would not think twice of procuring some form of nuclear weapon were one to be offered on the "gray" market by nuclear possessors not quite so zealous about non-proliferation (and

in need of "seller's market" amounts of hard currency). Once having procured such a device (or devices), there is no reason to assume that terrorists not use them. But it is not clear that any of these groups has enough funds to make such a purchase, since they are now into robbing banks and selling drugs to support themselves. Moreover, there are already warnings from the West, as by President Chirac, that the selling country would not be immune from retaliation if terrorists used a nuclear weapon.

Nuclear non-proliferation was, for the longest time, a highly specialized niche of state diplomacy. It was supported by a highly specialized niche of the intelligence trade. Both niches still exist, and both have utility (just because nuclear weapon technology has proliferated is no reason for states to throw up their hands and abandon future efforts at control). Nevertheless, the fact remains that the traditional means of prevention have been found to be less than perfect—in an area requiring perfection. Efforts must be redoubled.

The Proliferation Security Initiative (PSI) is a recent (2003) U.S.-led international initiative designed to interdict the transfer of nuclear weapons (and other Weapons of Mass Destruction), delivery systems and their technology. PSI is heavily intelligence-based, and details of its modus operandi are not widely publicized for obvious reasons. Some 70 nations have some connection with PSI, and three of the original "core" nations (France, Spain and Italy) are Mediterranean ones (we can include the UK, because of its presence at Gibraltar).

PSI very deliberately sets out to be "an activity, not an organization." It is an informal arrangement among participating nations, with no secretariat or formal organization. Participants agree to share information and act, when necessary, in accordance with existing international law, treaties and non-proliferation architecture. Participants have conducted several exercises (mostly maritime). Military assets are heavily involved (within the Mediterranean, the shipping intelligence pictures developed by NATO's OAE are available "free of charge" to PSI activities. In addition to the practical instructional and evolutionary ("lessons-learned") value of the exercises, that they are publicly announced (presumably for the deterrent value).

About a year ago, U.S. Secretary of State announced that eleven intercepts had occurred, five by states participating in PSI, though none of the intercepts were done by military means. However, owing to the extremely sensitive intelligence involved, details are not forthcoming (the thwarted proliferators presumably know). PSI enjoys the strong support of several Mediterranean nations. In concert with the existing MLO security architectures in the Mediterranean (of which these players are integral parts), and the high priority assigned by Western nations to countering proliferation, it is difficult to suggest any improvements to what appears to be a successful scheme.

## V. Conclusions: What does the history of multilateral organizations' involvement in the region suggest?

**First, there has been a steady (and, since the end of the Cold War, growing) involvement by Multilateral Organizations in the business of regional crisis response or crisis management.** I use "crisis response" very broadly as an overall umbrella for preventing (or ending) conflict, keeping the peace, and building stability.

**Second, Multilateral Organizations have resolved <u>no</u> conflicts in the Mediterranean region.** They may have restrained potential conflict (the classic example is Greece and Turkey, whose willing subordination to the higher goals of NATO doubtless mitigated (but did not entirely eliminate) historical animosities between those nations). They have managed to stop conflicts (i.e., put a stop to slaughter), as in the case of Bosnia and Kosovo, and keep them from flaring up anew. These are undoubted "wins," but the fact of the matter remains that Multilateral Organizations as military entities are not themselves constituted to resolve the underlying issues that generate crises. There is still no substitute for the diplomacy that urges local people to take responsibility and to exercise it well. We must rate this as still a work in progress.

**Third, although the Multilateral Organizations have employed many of the tools of "Soft Power" in attempts to preempt, solve or mitigate crises, the use of "Harder Power" tools has been fairly frequent since the end of the Cold War.** In some cases, this has been due to the

exhaustion of "Soft Power" techniques in putting a stop to humanitarian crises. Additionally, there are cases (a trend?) in which the perpetrators of a crisis obstinately refuse to permit or accept the use of "Soft Power's" carrots or sticks. In other cases, the tools of "Hard Power" are both the only ones readily available to quickly respond to crises and are well-suited for same (e.g., NATO's response to Pakistani earthquake relief efforts used military airlift and Combat Engineers; the latter's skill sets were appropriate to the task, and only military forces possess the large amount of tactical airlift capable of landing on rough or unimproved runways). Of course, when military units respond to a humanitarian crisis where the chances of being "in harm's way" are non-existent or minimal, it is hard to call that "Hard Power."

For better or for worse, the machinery of "Hard Power" remains a tool of choice to respond to crises that may affect the overall security of the Mediterranean area. Military units may be the only tool—organized, with organic capabilities—that can be readily wielded by statesmen that may show at least some near-term results. For example, we may agree there is no practicable enduring outside "Hard Power" solution to the problem of reconciling Israel and the Palestinians. But deploying Italian and French troops to Lebanon under the UN flag was the only outside tool available to ensure the truce held up after this summer's war in that simmering 60-year old regional conflict. So far it has. This brings up the other reason why "Hard Power" is a tool of choice. Through its application, we can halt in relative real-time the unpalatable effects of this crisis and then defer seemingly indefinitely (through military occupation) the finding of a real solution to the problem (e.g., the current situations in Bosnia and Kosovo).

Granted that the elements of "Hard Power" are often very imperfectly matched to the crisis at hand, they are, by deliberate design, "deployable." Until such times as Multilateral Organizations' member states agree to maintain large numbers of standing, self-contained "battalions" of deployable civilian medical responders, construction crews, well-drillers, economists, bankers, veterinarians, police, educators, civil affairs specialists, instructors of every persuasion, electrical power grid specialists, and the like, then the default solution will be to deploy organized military forces in response to crises. If some sort

of "action" is desired, there simply is no alternative. Alternatives are slowly being explored (e.g., EuroGendFor; that is, gendarmerie, but they are essentially military in organization).

**Fourth, Multilateral Organizations (most particularly, but not exclusively, NATO) have deliberately expanded their "networks" into the region,** either through direct accession of new members (Bulgaria, Romania in 2004) or through such "associate memberships" as the Partnership for Peace (in which Croatia, Albania, and Macedonia participate), or the Mediterranean Dialogue (which includes Egypt, Israel, Mauritania, Morocco, Tunisia, Jordan, and Algeria). NATO has launched a comparatively new effort to enhance security and regional stability through its Istanbul Cooperation Initiative. Other regional initiatives include the EU's Barcelona Process and the OSCE's Mediterranean Initiative. These are all intrinsically good initiatives which enhance regional cooperation in a multitude of functional areas.

**Fifth (and as a very worrying trend), there appear to be increasing difficulties on the part of Multilateral Organizations to come up with and deploy the requisite forces called for by the expressed political will of the nations in their organizations.** There are several reasons for this. Some member nations are still in the process of re-configuring Cold War "legacy" forces that were configured for local defense on their home ground. Others have successfully re-configured for expeditionary missions outside their countries, but have learned that the same dollar or Euro, when applied to more professional, long-service volunteer forces, buys more capability, but fewer numbers of "boots on the ground." Since many crisis response or peacekeeping missions are soldier-intensive, and since volunteer soldiers not fighting for their parent nation's survival may not acquiesce to being deployed indefinitely, no matter how professionally committed they may be, rotation schemes must be devised—or the volunteer soldier will, upon returning home, elect to cut short his participation in the nation's long-service forces.

Additionally, deploying forces overseas is a costly endeavor, not only for the actual troops, but also for acquiring the specialized and deployable kit, including maintenance capabilities, such as helicop-

ters. Both NATO and the EU basically follow a "logistics is a national responsibility" funding scheme, in which the nation offering up forces also is expected to pay all the associated costs, as was the rule during the Cold War as well (per MC-36/2). Since defense budgets compete against a host of other requirements in the national political arenas, it is not uncommon for a multilateral organization such as NATO to come to a consensus on a particular mission, and then for member nations to be unable to muster the share they may have offered to the common endeavor. The problem is particularly acute for high-demand, high cost, maintenance and logistics-tail intensive "force multiplier" equipment (such as transport helicopters). The Supreme Allied Commander, General Jim Jones, has been known to only half-jokingly call himself NATO's "Supplicant-in-Chief." But that is the reality for consensual organizations with no overarching authority that can wield some means of enforcement or punishment. That is, no supranational authority can order them to produce forces.

The UN, incidentally, does not follow this type of funding scheme. UN "Blue Helmet" forces are paid for from common funds. One result is that smaller, less-capable armed nations frequently compete for UN missions because the funding received actually helps subsidize the nation's armed forces.

**Sixth, regarding the Mediterranean area in particular, the problem of Israel and its relationship with its neighbors (and, for that matter, with the substantial Arab minority of its own population, which is around 15 percent) continues to loom large and directly or indirectly affect the general situation of peace among the local nations and between the local nations and the advanced EuroAtlantic nations.** Despite the formal peace treaties between Israel and Egypt and Jordan (which undoubtedly have advanced and maintained overall regional stability), the continuing war in Iraq, the recent war between Israel and Hezbollah, and the continuing conflict between Israel and Hamas in the Gaza Strip, plus the continuing search for terrorists, have contributed to a net decline in the region's stability since at least 2003.

**Seventh, what is Turkey's future within the European Union?** This is an enormously complicated subject, well beyond the scope of this paper. Yet, as we have seen, Turkey has from early on (1952) been an

integral part of the security architecture created by the West for the Mediterranean region (and, hence, for Euro-Atlanticism). At the time of its incorporation into this architecture, the common enemy was the Soviet Union and its Warsaw Pact. Turkey was of immense importance to securing NATO's southeastern flank, and there was considerable strategic foresight (brilliance, even) to its inclusion in the Alliance.

Today, as we have seen, we face quite different security threats within the Mediterranean (and impinging Middle East) region. From a purely strategic perspective, the existence of a strong, secular Turkey and its continued inclusion as a motivated and valued member in the region's security architecture makes immense strategic sense—secular in government, even if Islamic at home, as Prime Minister Erdogan says.

Can (and will) Turkey remain a motivated and valued contributor to the region's security if it is denied membership in a "club" which owes at least part of its success to the security shield to which Turkey contributed for nearly four decades? To repeat, I am very conscious that the issue of Turkish EU membership is fraught with immensely complicated political issues, and I would not presume to tell European friends and colleagues how to answer some of the key questions that are being debated in today's Europe. Is Turkey a "European" nation? Has it sufficiently embraced values and governance structures that are held to be "common" to Europe? Can it ever, or is it just too "alien?"

As we have seen, it is insufficient that these questions be answered by policy elites. At the end of the day, politicians are the tip of the policy elite spear—and politicians in democracies answer to voters (and the statesmen among them are supposed to actually lead the voters). But, from a trans-Atlanticist's perspective, it is fair that we push for inclusion of the Turkey security piece as an important—not the only, but an important—portion of the European debate about Turkey. It is perhaps ironic that the crux of the French and German governments' opposition to the 2003 U.S.-led invasion of Iraq was that diplomacy was not given a sufficient chance. "Diplomacy," by definition,

implies "compromise." This applies as well to the case of Turkey joining the EU.

When we examine the historical record of our Multinational organizations, we find that compromise (to include of principles and values) is not unknown. Strategic considerations, not absolute democratic values, led to Salazar's Portugal being welcomed as a founding member of NATO. Then the fact that Portugal was a member of NATO helped the Social Democrats of Europe to save Portugal from Communism in their revolution of 1975. West Germany was admitted into NATO in 1955. In return for the dubious privilege of being the nation whose territory would bear the brunt of a Warsaw Pact attack on the west, NATO did not insist upon the turnover of fugitive Adolf Eichmann as a pre-condition for joining (note the contrast to today's insistence by both NATO and the EU that Radovan Karadzic be turned over before Serbia can even consider accession talks).

As to Turkey's "Europeaness," how many European voters know that the populations of Martinique and Guadeloupe, only two of EU member France's overseas departments (and, hence, parts of the EU) are 90% African in origin, and receive their fair share of EU subsidies? They are also somewhat removed from the European continent; at least 3% of Turkey is physically located in Europe, plus there is a surprisingly lasting Turkish cultural legacy in many Balkan nations. As a recent article and the Major General in charge of Turkey's special forces have pointed out, what is left of the Ottoman Empire—Turkey—is its most European part. The historian will, quite properly and accurately, point out that "times were different," that standards and expectations have changed in the democratic nations of the West. The point is that there is ample precedent to strategic imperatives forcing a compromise upon principle suitable for the times.

We have examined, at length the role of Multilateral organizations in promoting security in the Mediterranean, Southern Europe and impinging Middle East. The role today of an enhanced bridge between Europe and Asia appears strategically compelling. The peril to the region's security of the threats we have discussed, exacerbated by a broken bridge between Europe and Asia, suggests that an accommodation between the EU and Turkey must become a priority.

# Opportunities and challenges in maritime security: Gaps in current regimes that lend themselves to new legislation and/or regional cooperation

By Captain Mark E. Rosen, JAG, USN (Retired)

## 1. Some trends in maritime security

### Terrorists' uses of the seas

Since September 11th, there has been a substantial increase in the maritime surveillance of ships or cargoes that might be under the influence of Al Qaeda or some other sympathetic group. The most notorious revelation of this genre came in March 2002 when it was widely reported that the Norwegian intelligence service identified 23 ships that were under al Qaeda control. In mid-July 2002, the Canadian Navy managed to capture over two suspected al Qaeda members operating a speedboat in the Gulf of Oman (USS Cole scenario). This was later followed by a small boat attack on the French supertanker Limburg off the Yemeni coast in October 2002 by suspected terrorists. Then there was the bombing of a super ferry by the al Qaeda-linked Abu Sayyaf group in Manila harbor in February of 2004 which resulted in the death of more than a hundred passengers.[2]http:// community.middlebury.edu/~scs/docs/desker It is probably safe to say that much of this activity has subsided due to the Proliferation Security Initiative (PSI) and aggressive tactics by some port states; however, there is every reason to believe that terrorists, and transna-

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2. Desker, Barry "Protecting the Malacca Straits," IDSS (2005) malacca%20strait%20security.pdf

tional criminals, will continue to make use of the high seas in the future for nefarious purposes because the fundamental legal, economic and regulatory rules which favor unrestricted (and unregulated) use of the high seas have not changed since 9/11.

## Piracy, hijacking

Illegal acts against merchant shipping involves hijacking, homicide, robbery and theft. This poses dangers to the crews, passengers and coastal communities since once pirates have completed their criminal mission they often leave the ship adrift. This greatly increases the risk of environmental disaster if the ship becomes involved in a collision or grounding. Even though the total number of incidents of criminal activity is statistically down from year's past, the International Maritime Bureau's (IMB) Piracy Reporting Center in Kuala Lumpur is still reporting upwards of 300 attacks each year.  The Red Sea/Gulf of Aden was recently added as one of the five regional piracy hot spots. In addition to this recent spike in activity, the ferocity and sophistication of attacks seems to be on the rise. Pirate attacks in the Strait of Malacca and the South China Sea, while in decline in terms of overall numbers, continue to disclose involvement by organized crime. In addition to the South China Sea, attacks are prevalent in the Brazil and Ecuadorian ports as well as Somali, Nigerian, and other Western African waters.

## Smuggling and trafficking in illegal migrants

Drugs and illegal aliens are routinely smuggled in small boats but also hidden among otherwise legitimate cargoes on large commercial ships. The financial rewards are staggering: "snakeheads" from mainland China earn between $35,000 to $80,000 per migrant.[3] Reliable statistics are hard to come by although a 2003 U.S. Department of

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3. The UN General Assembly has taken some action to criminalize the smuggling of migrants through the negotiation of a Protocol to the Convention against 2003 Transnational Organized Crime. While the Protocol follows, in many respects, the model for dealing with war criminals—prosecute or extradite—and establishes migrant smuggling as a universal crime, it isn't clear that the new protocol does anything to deal with the misuse of maritime flags to further alien smuggling.

State report estimates that between 800,000 and 900,000 persons are trafficked annually across the U.S. international borders—many by sea. However, the New York Times estimates that 250,000 persons left Ecuador alone on fishing boats from 2000-2004—most probably destined for the United States. That same report quotes immigration officials who estimate that Western Hemispheric alien smuggling is a $20 billion a year business.[4] The quantity of people and dollars involved in this illicit enterprise is much larger if generalized to a world stage.

### State-sponsored criminal enterprises: North Korea

The most ominous development in the illegal use of the seas came as the result of back-to- back seizures of North Korean ships by the Japanese and by the Australians in 2004. Both North Korean ships were involved in trafficking narcotics.[5] Japanese authorities have long suspected North Korea of using its flag to traffic amphetamines and other illicit drugs. The Australian seizure involved 110 pounds of heroin with an estimated street value of $48 million. At that time, a Japanese lawmaker described the incident as "nothing less than state-organized crime." If the North Koreans are willing to rent out their flag to narcotics traffickers, it is not difficult to envision North Korean flagged merchant vessels, or even their warships, being used for the transportation of contraband, terrorists or their instrumentalities.

## 2. Desired end state

- **Public order on the high seas predicated on LOS norms**

- **Plug gaps in the current regimes**

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4.    Thompson and Ocha, *By a Back Door to the U.S.: A Migrant's Grim Sea Voyage.* June 13, 2004.

5.    Interestingly, the August 2004 edition of *Sea Watch,* a maritime journal published in Singapore, reported that North Korean agents are actively recruiting shipowners to use the North Korean flag.
http://72.14.209.104/search?q=cache:lTvleOXe-QAJ:www.seasia.com.sg/base/newsletter/seawatch_aug2004.pdf+Malta+%2B+FOC+%2B+registries+%2B+2005&hl=en&gl=us&ct=clnk&cd=28

- **Regional/International Enforcing Mechanisms vs. Unilateralism**

- **Financially and Legally Responsible owners and operators of vessels**

- **Market incentives to eliminate "free riders" that pollute or create hazardous conditions on the seas that endanger other maritime users of coastal states.**

In assessing the need for new forms of legislation, or cooperative efforts by states, it is first appropriate to decide what is the desired end-state in terms of international oceans policy. The modern embodiment of oceans policy is the 1982 Law of the Sea Convention which the United States declares to be reflective of customary international law. However, there are gaps in the current text and portions of the legal text are quite obscure because the use of compromise language was necessary to secure global agreement.

McDougal and Burke's seminal work *The Public Order of the Oceans*[6] postulates that public order of the oceans is predicated on "the general community interest in both sharable, inclusive use and authority and non-sharable, exclusive use and authority, and the projection of... appropriate principles and procedures for the securing of all interests." To preserve the opposing interests of coastal and non-coastal interests, the 1982 Law of the Sea (LOS) Convention was negotiated to codify the balancing of interests and established jurisdictional zones between individual, nation-state, and "international" rights to ensure the protection of the marine environment, public order, and the responsible exploitation of resources.

The LOS Convention was negotiated during the height of the Cold War in which there basically three competing factions: (a) major maritime states like the United States and the USSR that wanted broad rights to ocean access; (b) the G-77 who were most concerned with gaining access to marine resources and revenues commensurate with their population size; and (c) coastal states who were interested in being able to exclusively exploit and protect their coastal resources

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6.   Yale University Press (1962)

and be able to the hold the navies of the major maritime powers at arms length. Issues of importance to the U.S. Navy—such as transit passage, military overflight, high seas exercises, and unrestricted submerged operations—were at the forefront of the US negotiating position and, in this regard, the 1982 LOS Convention was a great success. In the 30 or so years since the LOS Convention was negotiated, loopholes have emerged—creating general security issues that are in need of correction. Among them:

- Lack of effective sanctions on state actors and non-state actors which continue to use flag of convenience registrations, thereby creating fertile legal ground which can be exploited by terrorists, transnational criminals—including the smuggler of illegal migrants—and potentially the traffickers of WMD;

- Archaic and insufficient legal protections for the international community when it comes to establishing universally enforceable criminal sanctions versus individuals, groups, or states that use the high seas for nefarious purposes;

- A failure of international institutions, like the International Maritime Organization, to address the environmental and safety impacts of shipping on coastal states

## 3. Modern challenges preventing achievement of desired end states

- **Flag State Enforcement Concept—no longer works:**

  — **Presupposes equality among states in capability to regulate**

  — **Presupposes states have parallel interest in pushing an enforcement agenda**

  — **Flags of Convenience (FOC) registry continues to provide a limited legal safe harbor for transnational criminals and possibly terrorists**

  — **FOC registries also provide a legal safe harbor to a disproportionate number of substandard vessels**

McDougal's basic formula for public order on the oceans postulates a balance between the international community's rights to shared enjoyment of the global commons, the interests of coastal communi-

ties, and the corresponding rights of mariners, fisherman and commanding officers of warships to be able to enjoy high seas freedoms and various freedoms of transit and overflight.

One of the cardinal rules of international law is that ships shall sail under the flag of only one state and, save for a few exceptional circumstances, that state exercises exclusive enforcement and criminal jurisdiction over the activities aboard the vessels. This basic rule was recognized in the 1927 *Lotus* decision of the International Court of Justice and is now codified in the LOS Convention which requires that there be a "genuine link"[7] between the ships' owners and the state whose flag is being flown. The LOS Convention also recognizes the important legal principle that there is equality among states and the sovereignty of each state to regulate its own internal affairs—including management of its flag vessels. The 1982 LOS Convention is the framework establishing the balance between these competing interest, i.e., in exchange for giving the flag state nearly exclusive jurisdiction over the activities onboard the vessel, there is a corresponding requirement that the flag states must "effectively exercise its jurisdiction and control in administrative, technical, judicial, and social matters over ships flying its flag." However, inasmuch as there is no international police force, special prosecutors, or standing courts to cite individuals or rogue states with violations of the LOS Convention, the principle of flag state control and enforcement is essential to ensure that LOS norms are upheld.

One recurrent issue in most of the transnational issues discussed in this paper involved actor(s) making use of a ship from a flag of convenience (FOC) country which had officers and crew members that probably had no national connection with either the ship owner or the flag state. A 2003 study by the U.S. Maritime Administration found that competitive pressures have prompted a continuing decline in the national flag registries in developed countries. The most frequent visitors now to U.S. ports are FOC vessels with crews

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7.  The Genuine Link theory emanates from the famous *Nottenbohm* decision of the International Court of Justice. Judgment of Apr. 6, 1955 [1955] I.C.J. Rep. 4. The genuine link requirement is codified in Art. 91 of the LOS Convention.

from countries which are not affiliated with the flag state (except for Greece):

**TOP 5 RANKINGS**

| FLAG | CREW |
| --- | --- |
| Panama | Philippines |
| Liberia | PRC |
| Cyprus | India Bahamas |
| Russia | |
| Malta | Ukraine |

**Source:** U.S. Maritime Administration. Vessels calling selected U.S. ports during 2000 on foreign-flag vessels.

The MARAD study (which was published in 2003 but revalidated data collected throughout 2000) concluded that competitive pressures continue to push professionals from developed countries out of the maritime field because of declining wages. MARAD's conclusion: "The crew nationality data appears to portend the greater use of officers from low cost crewing centers even as the supply of top officers from developed countries struggles to replace itself." Presently, there exist some 27 countries offering FOC registry. [8] Malta, for example, is a leading FOC registry state for European ship owners, although flags from Cyprus, Antigua and Barbuda are also in heavy use.[9]

Safety and adherence to labor standards is another major problem with FOC registries. The current system of FOC registry has stimulated a "race to the bottom" among some flag states in terms of costs of complying with current crewing and material requirements. The profit margins in the operation of ships is so slim that shipowners

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8.  The top shipping nations and share of world tonnage are: 1. Panama – 20 percent, 2. Liberia – 10 percent, 3. Greece – 6 percent, 4. Bahamas – 5 percent, 5. Malta – 5 percent

9.  http://www.isl.uni-bremen.de/products_services/publications/pdf/COMM_4-2005- short.pdf

have gravitated to FOC registries where they can take advantage of less rigorous inspections and, more importantly, obtain access to inexpensive rated- and non-rated seamen from third world countries. With globalization, there is now robust competition among FOC registries who use their lax standards to lure ship registrations. Some registries not only advertise on the internet, but even allow registration on-line.[10]

FOC vessels are generally older than the average age for the rest of the world fleet. Many of the detentions by port state control authorities involve aging and badly maintained FOC vessels. Casualties are also higher among FOC vessels. In 1997, 46 per cent of all losses in absolute tonnage terms were accounted for by just 8 FOC registers. The top ten registries in terms of tonnage lost as a percentage of the fleet includes five FOC registers: Cambodia (1st), St. Vincent (5th), Antigua (8th), Cyprus (9th) and Belize (10th). The pedigree of the oil tanker *Prestige* which broke in half off the Spanish Coast causing devastating environmental damage is illustrative of the problem:

On 11 November 2002 the oil tanker *Prestige*, flying the flag of the Bahamas, under the command of a Greek captain with a crew of Filipinos and Romanians, chartered by a Liberian-registered company based in Switzerland and probably owned by Russian nationals, ran into a storm as it carried its load of 77,000 tons of heavy fuel oil from Latvia to Singapore. The tanker was operating legally, but only just. At 26 years old, it was older than most currently operating oil tankers. It had only a single hull, making an oil spill more likely if an accident occurred. For a variety of reasons—the age and condition of the vessel and the international nature of the crew among them—the ship could not have been legally registered in the United States or most European states. Its owners would not have wanted to register it

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10. See, for example, Corporate and Maritime Administrator for the Republic of the Marshall Islands, "Vessel Registration and Mortgage Procedures-Register IRI." Quote is from DeSombre, "Globalization and Environmental Protection on the High Seas," Unpublished paper delivered at the Annual American Political Science Assoc. (2003).http://www.register-iri.com/content.cfm?catid=28http://www.ceu.hu/polsci/Illicit_Trade-CEU/Week5-DeSombre.doc

there anyway; the environmental, safety, and labor laws they would have had to follow would have been too strict, and the fees and taxes too high.[11]

There is also a major security component to the FOC problem. For years, small governments have allowed criminals to register ships anonymously and gain access to their flag to transport everything from drugs and illegal immigrants. There is evidence that FOC registries were exploited by al Qaeda to transport supplies used to blow up the U.S. embassies in Kenya and Tanzania.[12] Also, according to one Lloyd's report, the al Qaeda fleet had been lucratively used in recent years "to facilitate the smuggling of high quality heroin and hashish from Afghanistan to the West." The London based International Transport Workers Federation (ITF) has written extensively for many years that ships registered under FOCs have, and will continue to be used, to transport explosives, terrorists, or worse. The ITF argues that the FOC system is inherently corruptible:

Corruption and lack of accountability are endemic in the FOC system, which is built on two pillars: no questions asked of shipowners and no questions answered to anyone else. When a ship is registered with one of these flags, a curtain of secrecy descends—as valuable if you're a terrorist as if you're a money launderer, someone who wants to sink a ship for insurance, or work its crew half to death before abandoning them unpaid in a foreign port.

Flag of Convenience (FOC) registries are also deleterious to international business and trade because they provide legal cover unscrupulous ship owners—the owner can remain anonymous and use anonymity to escape liability when things go wrong. So, when dangerous ships sink or pollute waters the shipowner can hide behind the limited legal liability schemes or claim bankruptcy in FOC countries. When this happens, the coastal states that play "host" to the vessel when it suffers its casualty become responsible for the cleanup and

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11. http://www.ceu.hu/polsci/Illicit_Trade-CEU/Week5-DeSombre.doc

12. See e.g., *The Economist*, May 18, 2002

remediation costs. Likewise, the owners of the cargoes, or their insurers, often have no recourse when these ships are lost.

In the cost competitive freight environment, FOC vessels are well positioned to gain increased market share as reputable national flags decline. The OECD has concluded that FOC non-observance of these safety standards distorts competition across the entire shipping industry.[13] Moreover, another OECD study found that owners of sub-standard ships manage to externalize the costs associated with these ships, and they rarely suffer serious economic loss from the problems that arise from lack of adherence to collective standards.[14] The OECD concludes that there are no signs that the current system, in which sub-standard ship operators get away with breaking the rules, will decline since there's too much money to be made in this grey market.

- **Free-ridership among ship owners/operators**

  — **Freedom of navigation? freedom to pollute shorelines or engage in unsafe practices**

  — **Turkish Straits; Lombok/Sunda; Malacca—coastal states now shoulder financial and ecological burden of ship pollution and unsafe navigation**

  — **Often linked to FOC problem**

  — **Free ridership promotes unilateral claims by coastal states**

The 1982 LOS Convention was one of the very first multinational international instruments that imposed important duties on flag states to ensure that owners and operators of vessels make use of the seas in a manner which does not put the marine environment at risk. Coastal states have the authority to detain or seize vessels responsible

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13. Organisation for Economic Cooperation and Development, *Competitive Advantages Obtained by Some Shipowners as a Result of Non-Observance of Applicable International Rules and Standards* (Paris: OECD, 1996).

14. SSY Consultancy and Research, Ltd. (for the OECD Maritime Transport Committee), *The Cost to Users of Substandard Shipping* (Paris: OECD Directorate for Science, Technology, and Industry, January 2001). The report notes that much of the cost is borne by the insurance industry.

for causing material or environmental damage in their waters provided that the vessel: (a) has been identified as an offender; (b) is making a port call to the country in which the damage occurred or in a third country which has an enforcement agreement with the country where damage occurred,[15] or (c) has been caught "red handed" discharging oil or other waste in violation of the coastal state's laws.[16] Indeed, the clear preference in the LOS Convention is for the unrestricted passage of military and non-military traffic through international straits, archipelagic waters, or through foreign territorial seas.

Article 44 of the LOS Convention stipulates that coast states may not hamper or delay the transits of vessels through international straits; but allows for coastal states to install navigational and other safety aids and <u>encourages</u> (does not require) user states to enter into agreement with the states bordering straits to help bear the cost of these improvements.[17] As one can probably imagine, there is no incentive for shipowners, especially those from FOC registry states, to participate in cost sharing arrangements to increase the safety in navigationally constrained areas. Turkey, for example, is expressly prohibited by the Montreux Convention from requiring oil tankers (some of which are supertankers) carrying Caspian oil to embark pilots to make the treacherous passage through the Turkish Straits. As a consequence, Turkey has had to bear almost all of the costs of installing Vessel Traffic Services (VTS) system in the Straits[18] and has had to bear almost all of the cleanup costs from 245 serious marine accidents in the Straits from 1982 to 2003.

The Malacca and Lombok/Makassar Straits in Southeast Asia are another heavily burdened area in which a comprehensive cost sharing system does not yet exist. Over 100,000 oil tankers and container

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15. See *infra* notes 27 and accompanying text concerning port state control MOUs.

16. Under Art 111 of the LOS Convention, coastal authorities may pursue vessels outside of its territorial seas if in "hot pursuit" of a vessel that committed an offense inside of the coastal states territorial sea.

17. Article 43 LOS Convention

18. Original cost of installation of the system was set at $20 million.

and cargo vessels transit the Straits of Malacca and Singapore each year and carry over 3 millions barrels of crude oil through the Straits each day. In the nearby Indonesian Archipelago, the Lombok/Makassar Strait is heavily used mainly by very large crude carriers. The transport of radioactive wastes from Europe to Japan through the Asian Pacific region—in particular through the Straits of Malacca—is a related concern. Coastal states along the routes have expressed concern and others, such as Malaysia, have demanded that the vessels not enter Malaysia's territorial waters. Indonesia has declared that as it cannot close its international archipelagic sea lanes but it has called on Japan not to use Indonesian waters to transport their radioactive wastes.

In this overall debate, shippers and maritime states have the law on their side because passage rights through straits, archipelagic sea and lanes and coastal territorial seas (in innocent passage) are allowed without interference or discrimination based on flag or cargo. However, so far as can be determined, nothing has been done to provide financial assistance to coastal states to increase their response capabilities, install navigation aids, etc., to mitigate the devastating effect of an accident involving these types of hazardous cargoes. From an ocean policy perspective, putting coastal states—like Malaysia and Indonesia—"in a box" in which they are legally constrained from doing anything to regulate hazardous transits near their coastlines puts great pressures on those states to enact unilateral claims to protect their marine resources and their coastal populations. Such unilateralism upsets the balance which the 1982 LOS Convention sought to establish.

The continued heavy use of straits and other sensitive sea areas by irresponsible shipping—many flying FOCs—has taken its toll. Asia and Africa have few effective controls on ocean dumping. Manila Bay and the adjacent freshwater Laguna de Ray have been covered with a blanket of plastic bags and similar garbage for many years. All major shipping routes in Asia are polluted to some degree. Spills occur mostly by collisions or grounding. Many ships deliberately dump oil wastes into the water to avoid having to pay to have their tanks cleaned. Some areas can have more than 25 oil slicks in a 10,000 sq. km area at any given time. The Turkish Straits experience a serious

accident involving ships carrying hazardous or noxious materials almost every year. Collectively, these oil spills have seriously affected marine life and have a very negative effect on fishery stocks and human health.

Closer to home, the Bluewater Network, a San Francisco-based marine environmental organization, predicts that global commercial vessel traffic and the related air emissions are expected to double or triple in the next 20 years. The California Air Resources Board expects smog from ships to represent 20–25 percent of the total pollution in Los Angeles by 2022. Annex VI to MARPOL addresses this issue, in part, but only a handful of states adopt recently enacted regulations to limit SOX emissions—despite the fact that worldwide shipping is expected to triple by 2020 as global trade increases.

Efforts to curtail pollution from ships as a result of legal dumping (i.e., substances other than oil or plastics), oil pollution, and air emissions have been stymied at the IMO because the organization operates on the basis of consensus and FOC registry states wield considerable power behind the scenes at the IMO. Likewise, coastal states have no effective legal recourse against ships involved in unsafe operations, illegal fishing, or vessel source pollution because of the inherent difficulties of identifying culprits. Similarly, if an offending vessel enjoys a FOC registry, there is a strong likelihood that the coastal states will almost never every realize an adequate legal remedy because the vessel owners can hide in the FOC legal system and the value of the vessel (assuming the vessel is arrested pursuant to legal proceedings in one of its ports of call) is often insufficient to pay for the costs of a pollution incident or accident. In the case of vessel air pollution, coastal states have no remedies at all. That said, maritime states, including the United States, are understandably leery of increased coastal state regulation because no one wants to see a system of mandatory reporting of ship movements or toll booths at the world's ocean choke points.

- **Weak Enforcement Authorities for Responsible States.**

  — **Piracy & Right of Approach and Visit**

  — **Regime too restrictive—definitions outmoded**

Piracy, unauthorized broadcasting and slave transport are only recognized "universal crimes" under the LOS. The list needs to be broadened to include smuggling of illegal migrants, drugs, WMD, and perhaps other types of contraband.

Thus far, we have documented two significant challenges to public order and the oceans: (a) a shadow FOC registry system which is not accountable to the community of interests in oceans law and policy and which provides safe haven for marginal shipowners as well as criminals, smugglers and terrorists; and (b) inadequate remedies for coastal states to recoup the costs they shoulder as a result of imprudent use of the seas by FOC and other states. And, while the 1982 LOS Convention and customary international law invested special powers in warships to enforce public order on the seas, the reality is that there are many enforcement loopholes that preclude effective enforcement by warships from other than the flag state.

According to the January 2006 annual report by International Maritime Bureau Piracy Report Center (Kuala Lumpur) there were 276 piratical attacks in 2005—a drop from 329 incidents in the prior year. There were declines in piratical attacks in the Malacca Strait, although new attack patterns were noted near the coastlines of Thailand, Brazil, Venezuela, Columbia, Haiti, Nigeria, Guinea, Somalia, Indonesia, Vietnam, Iraq and Tanzania. These declines in the total number of incidents were offset by a "drastic increase" in the number of kidnap incidents in which crew members or cargoes are seized for ransom.[19] Further, when criminals seize a vessel, the vessel's original flag is often removed and replaced with that of another State. This is a problem not only for flag States, their crews and ship owners, but also for coastal States because these flag switching ruses create confusion among enforcement officials. Another disturbing trend is the increased involvement by organized criminal gangs in transnational maritime crimes. Like the problem of switching flags, sophisticated cross border piratical syndicates can often confound enforcement officials. The majority of incidents are non-violent but there has been a noticeable rise in

19. Raymond, C., *Piracy in Southeast Asia: New Trends, Issues and Responses,* Harvard Asia Quarterly (2006) http://www.asiaquarterly.com/

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the number of violent episodes and a greater number of incidents involving political groups.

Piracy is recognized in customary international law and the LOS Convention as a "universal" crime which all states have a duty to suppress. Warships have a corresponding right to interdict and arrest pirate vessels on the high seas as well as involuntarily board vessels which are stateless and suspected of piratical acts. Piracy is defined as illegal acts of "violence or detention or any acts of depredations" committed by the crew or passengers of a private ship or aircraft in or over international waters against another ship or aircraft. To constitute a textbook case of piracy, the incident must have occurred on or over international waters for private purposes. Acts done for political purposes, or crimes committed in port, are not considered piratical acts even though statistics often group the incidents together. Regardless, the requirement of demonstrating that illicit action is for "private gain" or that the incident occurred outside of another state's jurisdiction has seriously impeded enforcement efforts by the worlds' navies and coast guards.[20]

As of yet, there has been no concerted effort to broaden the concept of piracy so that it captures acts of "maritime terrorism" by individuals who commit crimes against ships for ideological reasons or have some type of state sponsorship. Following a spate of commercial aircraft seizures by terrorist groups and ordinary criminals in the 1960s and 1970s, three international conventions were enacted to create the international crime of air piracy. The Conventions do not distinguish between seizures for private gain or those by terrorists or so-called freedom fighters. Unfortunately, in the LOS context, non-aligned countries did not want to cede broad authority to the U.S. Navy (or allied warships) during the LOS negotiations in the mid 1970s to seize foreign flag vessels suspected of terrorist acts at sea. Nor did those states (like Cuba) want to empower the U.S. Navy to apprehend

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20. Raymond, *supra,* also alleges that complicity by coastal authorities exacerbates the difficulties of prosecuting a textbook case of piracy. She describes various incidents in which authorities in China and Indonesia took less than aggressive action against pirates—presumably because their piratical actions did not affect their own nationals.

"freedom fighters" who were accused of committing piratical acts in a "war of liberation."

Because of the narrowly drawn definition of piracy, the world's navies—especially those that are participating in the Proliferation Security Initiative (PSI)—derive most of their enforcement powers on the high seas from either bilateral agreements or the right of visit codified in Article 110 of the LOS Convention. The right of visit allows warships from third party states to approach and involuntary board vessels suspected of piracy, unauthorized broadcasting or slave trade. In cases of questionable nationality, the LOS Convention also recognizes the rights of warships to involuntarily board ships on the high seas to verify the nationality (flag) of ships that are unflagged or flying under false colors. This power to conduct involuntary board-ings only extends to verification of the ship's papers; but, often times the masters will consent to search of their vessels.

The U.S. has broadened the scope of Article 110 via the negotiation of about 25 bilateral agreements with a number of states which, in essence, provide U.S. enforcement authorities a "limited power of attorney" to involuntarily board their flag vessels if those vessels are suspected of engaging in illicit drug trade (the most common) and, in some cases, migrant smuggling. In most cases, these MOUs require some form of actual consent by the flag state. Involuntarily boardings to verify nationality of stateless vessels do not need any such advance permission. But, no matter how irresponsible or illicit the captain, crew, or cargo, warships have no power to stop, detain, or board ves-sels on the high seas if the vessel is legitimately registered in a partic-ular flag state, the flag state acknowledges its registry and refuses permission to board.

To address the limitations on the right of non-flag state authorities to interdict ships suspected of criminal or terrorist activity, major states sought to close some of major enforcement gaps at the IMO by push-ing for an expansion of the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA). That Convention was adopted by the IMO following the *Achille Lauro* inci-dent and follows—in a very general sense—the same model as for the prosecution of war criminals: states in possession of a war criminal

must either prosecute or extradite. Following 9/11, the IMO's Legal Committee began deliberating on changes to SUA which were then adopted into a new Protocol in 2005. Three notable changes are contained in the Protocol:

- A new offense was created under SUA to criminalize the unlawful international transport of WMD aboard a ship;

- A new provision authorizes any state encountering a ship suspected of carrying WMD to involuntarily board and search the vessel if the flag state gives permission or fails to respond to a boarding request within four hours;

- A provision which strengthens the current international practice of allowing warships to involuntarily board ships suspected of WMD trafficking if the ship is without nationality or nationality is in doubt.

SUA continues to look to the flag state to apprehend or prosecute those guilty of criminal acts at sea, or to extradite them. There is also a provision in the pending SUA changes in which state parties may, after notifying the IMO Secretary General, conduct an involuntary boarding if the flag state has not responded to a request to board within four hours vis-a-vis vessels involved in suspected trafficking of WMD. If the flag state refuses permission to board, there does not appear to be any recourse against the vessel. Third party rights also do not exist to interdict or board vessels suspected of harboring terrorists, carrying conventional weapons, or being involved in inchoate terrorist activities.

In the context of boarding agreements and pending SUA changes, it is noteworthy that as part of the PSI effort, the US and Liberia announced in February of 2004 that they had agreed to new boarding and inspection arrangements in international waters where either side has reasonable grounds to suspect that one of their ships is carrying illicit WMD cargo, delivery systems or related materials. In 2004, the US and Panama and the Republic of the Marshall Islands followed suit. By August 2005, three more significant FOC flag states—Belize, Croatia and Cyprus—signed a reciprocal ship boarding accord.[21]

Complementing the pending SUA changes are recently approved changes to IMO's International Ship and Port Security (ISPS) Code which become effective on July 1, 2004. That Code reaffirms the right of port state officials to conduct arrival or in-port inspections of ships to ensure that visiting vessels are not discharging unauthorized weapons, incendiary devices, or explosives without prior notice and approval. That right to inspect does not affect the right of all port states to conduct inspections of non-sovereign immune vessels inside of the territorial sea to search the vessel's papers and cargo when there is a basis for believing the ship presents a security risk. Moreover, the concept of port state control extends to the right of port states to board, inspect, and where appropriate detain a merchant ship which is engaged in an act of pollution, has observable safety defects, or its logs and/or SOLAS Certificates are not in proper order.[22]

Port state control authorities are bolstered by MOUs between various port states throughout the world in which the states party agree to share information on substandard shipping and conduct inspections of some percentage of the vessels entering their ports using a standardized inspection process (see below). "The goal across a given MOU is to increase the odds that a given ship will be inspected in at least one of the ports at which it stops, and to target for inspection those ships that the port states believe most likely not to meet the required standards—or based on overall level of risk by ships that fly that state's flag."[23]

As a result of the Maritime Transport Security Act of 2002, the U.S. Coast Guard (USCG) is also required to increase its scrutiny of ships

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21. http://www.state.gov/t/us/rm/32413.htm

22. The legal authority of states to conduct such inspections is based on customary international law as well as well as IMO sponsored conventions, specifically, the International Convention for the Prevention of Pollution from Ships (MARPOL)(1973/78), the 1974 Safety of Life at Sea Convention (SOLAS), International Labor Organization (ILO) Convention No, 147, The Merchant Shipping (Minimum Standards) Convention (1976) to name a few.

23. 22. DeSombre, *supra*, note 9.

from flag states which have higher than average detention rates, or have higher rates of non-compliance, with relevant IMO standards, and provide an annual report on those foreign flag vessels which call in U.S. ports.[24] Past reports disclose an amazingly transparent and aggressive port state control inspections program by the USCG which addresses many of the factors herein to target vessels from the flag states—most FOC—which do not responsibly regulate their vessels. This aggressive USCG action, coupled with similar ones in other countries which are part of a port state control regime, has had a positive impact in term of controlling the access of substandard ships into modern ports.

Unfortunately, these regulations do not cover vessels that are going to countries with lax inspection systems or vessels that are simply in transit. Also, however promising the port state control initiatives and the pending SUA changes, the reality is that the SUA amendments will take a number of years to be adopted by all flag states and fully implemented. Also, it should not be forgotten that the specialized SUA rules only apply to ships involved in suspected trafficking of WMD. Moreover, even if the changes to SUA are ratified by many governments, and then ordered into effect, those FOC states which have not ratified the changes will resist any requests to conduct involuntary searches of their vessels. Accordingly, absent universal ratification of the recent SUA changes will mean that terrorists and organized crime will simply shift their activities to those flag of convenience states that provide a safe haven from recently enacted SUA regulations.

## 3. Legislative and legal approaches

- **Flags of Convenience—Flag State Enforcement**

    — **Seek new international legislation which establishes clear standards for state licensing and regulation.**

    — **Free-ridership among Ship Owners/Operators**

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24. http://www.uscg.mil/hq/gm/pscweb/publication.htm

— **Establish mandatory assessment system at IMO for all vessels involved in other than trade in coastal waters. $$$used to improve NAVAIDS, provide casualty response capability**

— **Alternatively, allow states bordering key Straits to impose user fees**

- **Need for Increased Enforcement Authorities**

    — **Press vigorously for changes to SUA (The Rome Convention)**

## A. Legislation and the FOC Problem

U.S. policy towards FOC registration is conflicted because a considerable portion of the world's FOC fleet can be traced to U.S. commercial interests. U.S. shippers long ago deserted the U.S. merchant marine because of the high labor and regulatory costs associated with U.S. Coast Guard inspections and oversight, and archaic labor rules which placed significant restrictions on management prerogatives.[25] Consequently, mustering a political consensus in the U.S. congress will be difficult, even though there is a growing international movement to ban the FOC registry system. This includes environmental groups such as *Greenpeace*, most regional fishing organizations,[26] and international labor unions—giving rise to an increased probability that the United States and other major maritime states would be forced to confront the problem. If this issue gathers traction, internal policy conflicts (in the U.S. and among many major maritime pow-

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25. In 2002, approximately 562 oceangoing vessels in the U.S.-foreign trade are owned by U.S. companies flying a foreign flag and crewed by foreign seamen from a plethora of nations. Approximately 147 ships today fly the American flag and are crewed by American seamen. Statement of David Heindel, 2d Vice Chairman, Seafarers Fisheries and Inland Navigation Section, International Transport Workers Federation before the House Armed Services Committee, June 13, 2002. http://www.house.gov/hasc/openingstatementsandpressreleases/107thcongress/02-06-13heindel.html

26. For many years, unscrupulous operators have used flags of convenience to circumvent fishing quotas that are established in certain multilateral agreements and MOUs between coastal states and fishing organizations.

ers) between "big business" (favoring continued use of FOC because it helps to stimulate competition among freight haulers and promote free trade in the transport industry) versus those from the environmental, security, and labor fields (who believe that the principle of flag state control is being subverted and that balance must be restored) are inevitable.

Short of a major diplomatic conference to negotiate an entirely new set of norms over flag state control and enforcement, there are less draconian options that policy makers might consider to help contain the negative externalities of the FOC system. In no particular order, suggestions include:

- States using their contracting or tax authority to not recognize the costs of transport for goods or services that are transported on a FOC vessel. In a hypothetical case of goods purchased from a supplier in China who shipped those goods to Los Angeles on a Liberian flag vessel, the seller of the goods in Los Angeles would not be able to write off the transportation costs as a cost of business under the U.S. internal revenue laws.[27]

- Bringing a case or cases before the International Tribunal for the Law of the Sea to openly challenge FOC registrations as illegal under the LOS Convention because there is no genuine link between the flag and the owner, captain and crew.

- Institution of a standardized global vessel marking system which allows for the permanent marking and clear identification of vessels to aid in law enforcement, regardless of any changes in the flag or name of the vessel.

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27. This notion is not completely without precedent. Under current USAID rules, for example, US donated foodstuffs must be transported to donee nations only on U.S. flag merchant vessels. Similarly, DHS has strict rules codified in Sec. 835 of the Homeland Security Homeland Security Act which prohibits DHS from contracting from any "U.S. Company" that is an "inverted" domestic corporation, i.e., one which has moved a substantial amount of its business operations offshore for tax and regulatory avoidance reasons.

- Pushing for more aggressive action within the OECD and WTO to recognize that use of FOC vessels is trade distorting and should be sanctioned in a trade setting via the imposition of some type of punitive duty against cargoes which are transported on vessels from irresponsible FOC countries. The U.S. Coast Guard, for example, uses FOC "irresponsibility" criteria to differentiate among flag states for inspection purposes. A similar approach could be taken against cargoes being transported aboard irresponsibly operated vessels. Such a suggestion is not that far fetched since the absence of environmental or labor regulations has been long recognized as a form of subsidy if nations use their absence of responsible regulation as a method to gain an advantage for its own trade.

## B. Legislation to Address Free Ridership

Since it is difficult to determine which vessels are violating the rules against vessel source pollution on the high seas, it's usually hit or miss that a coast guard or navy vessel will catch a polluting vessel in *flagrante-delicto*. There are also practical legal and policy limits on the actions that can be taken. Vigorous enforcement of the existing state port control MOU network should continue, but that effort alone will not solve all of the issues identified in this paper. Accordingly, there are some other measures that merit consideration:

- Major maritime states should only grant FOC vessels access to their ports if they sign a multilateral MOU in which the FOC vessel's flag state provides warships of the MOU partners consent to board all relevant FOC vessels and conduct port state control inspections at any time on the high seas. This might commence as a bilateral agreement that is later transitioned into the PSI framework.

- Article 43 of the LOS Convention envisions, in a straits context, that there will be cooperation between maritime users and coastal states. There were discussions—led largely by Japan—that a cooperative scheme should be established to assist Southeast Asian coastal states to cover the costs of installing modern navigation aids, establish a response capability, or provide compensation to straits states for the costs of pollution cleanup.

That initiative by Japan should be formalized to authorize the coastal state to conduct a survey of all transiting vessels and, after a suitable period of sampling, obtain financial assistance from the flag states that placed the greatest amount of "stress" on the Straits. This formulation might be proposed by the IMO.

- So long as FOC states can license vessels which transport hazardous or noxious substances on the high seas and there is equality among flag states in terms of rights of access to the high seas, the question arises whether some form of international licensing is necessary to ensure conformity with recognized international standards for safety and pollution control. The IMO could directly license vessel operators or license flag state credentialing organizations.

## C. Legislation and gaps in law enforcement authorities.

Most of the military actions against ships suspected of harboring terrorists have been legally predicated on rules contained in the 1982 Law of the Sea (LOS) Convention. As indicated above, the LOS Convention recognizes the rights of warships to involuntarily board to verify the nationality (flag) of ships on the high seas or arrest ships engaged in piracy or slave trade. Involuntary boarding by warships may also occur if the flag state has given real-time or advance permission to board or if the flag state is unable to confirm the identity of the vessel. Even though the U.S. has made good progress in the areas of marine law enforcement vis-a-vis drugs, migrants and carriage of WMD by virtue of some 25 bilateral agreements, there are still major enforcement gaps against those flag states with which there are no bilateral agreements or the items being smuggled are conventional weapons, illegal migrants (or combatants), maritime criminals, narcotics, or other nefarious items which are outside the scope of the recent changes to SUA.

The United States sought to broaden the scope of SUA at the 86th meeting of IMO's Legal Committee on April 28–May 2, 2003. The U.S. wanted to include offenses against the security of navigation (terrorism) among the range of offenses requiring action by the flag state. The new definition, which was hotly debated, included criminal sanctions for ship owners and masters that knowingly transported ter-

rorists, illicit cargoes, or weapons of mass destruction. Some delegations were uneasy with the definitions of terrorist activities and the evidently standards that would be needed before a ship could be boarded.

There were also some concerns—probably unfounded—that a master could be surprised to have his ship boarded by naval commandos because he was unaware that he was carrying a nefarious cargo. The U.S. also sought to establish a reciprocal consent to boarding regime among SUA parties that was patterned after the procedures used in the counterdrug area, where flag states have given advance consent to board if certain conditions were met. Unfortunately, the U.S. did not make much headway on this particular issue because all states that participated in the SUA meetings were not fully conversant with this reciprocal boarding concept that the U.S. and other major maritime powers have used successfully in the counterdrug arena. That initiative should again be pursued. The same IMO forum used to broker the recent SUA amendments could be used to pursue the following additional measures to aid in enforcement:

- A requirement that ships over 500 tons involved in international trade have a security plan which is reviewed by the flag state and that there is a person identified aboard the ship's, and the company, who have primary responsibility for ship's security and conducts vulnerability assessments;

- A rule that merchant ships and offshore oil platforms have a means of transmitting rapid alert messages of possible terrorist activity;

- A requirement for all ships involved in international and domestic trade install automatic identification systems (AIS) which functions in the same way as IFF (on aircraft) to track a ship's location and provide electronic identification to coastal authorities;

- That flag states provide detailed information on true ownership of vessels rather simply disclose the legal shells which are the registered owners i.e., transparency of ownership; and

- Better documentation of mariner status and mandatory background checks for mariners.

Going forward, John R. Bolton, former Under Secretary for Arms Control and International Security, testified before the House International Relations Committee Washington, DC June 4, 2003 that a forward looking non-proliferation strategy required an ability for responsible states (e.g., members of the PSI) to interdict and inspect vessels from "countries of proliferation concern." Since SUA changes are not in the immediate offing, the best approach to this problem is for like minded states—such as the PSI member states—to reciprocally agree to a multilateral arrangement in which involuntary boardings are preauthorized if certain criteria are present.

Those same states could reciprocally agree—as a logical extension of port state control MOUs—to require FOC vessels entering their ports to also consent to high seas boardings if certain factors are present. Since the United States has tremendous market clout due to the large numbers of FOC vessels that seek to visit US ports in the course of international trade, it could provide leadership in this area.

The final option would be for the United States, and other like minded states, to seek to broker a multilateral instrument which expands the basic norm in the LOS Convention to include sanctions on FOC states that do not follow the principle of responsible flag state regulation or simply denies recognition to such vessels and regards them as stateless for any an all purposes.[28]

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28. Since the LOS Convention was negotiated in the mid 1970's, the Convention has been twice amended using a back door "MOU" process. First, an "Implementing Agreement" which fixed the deep seabed mining provisions was negotiated and signed by the United States in 1994. In 1995, the so-called Straddling Stocks Agreement was negotiated as a LOS Convention "implementing agreement."In both instances, the international community made substantial revisions and additions to the LOS Convention using less rigorous legal procedures to avoid risking changes to the underlying instrument.

# 4. Regional approaches

- Flags of Convenience—Flag State Enforcement

  — Build upon port state control regimes—establish bans on FOC ship entries from states with substandard enforcement.

- Free-ridership among ship owners/operators

  — Establish regional compacts (enforced via regional navies) to conduct at-sea inspections for substandard shipping

- Need for Increased Enforcement Authorities

  — Continue participation in PSI to utilize all possible enforcement options

  — Empower regional navies via reciprocal boarding agreements to indict, inspect and detail vessels which are problematic.

## Regional approaches to FOC vessels

To combat the problem of substandard vessels exploiting FOC registries, regional actors have formed a regional network of Port State Control MOUs (Memoranda of Understanding) exchanging data on substandard vessels establishing inspection criteria, and establishing reciprocal obligations to detain substandard vessels, and inspect at specified intervals. The 1982 Paris Memorandum of Understanding on Port State Control (Paris MOU) was the earliest regional agreement of this kind and has been the model upon which other regions of the world have based their agreements. At present there are eight regional agreements on port state control and these have a total of 123 member states, namely:

1. The Paris Memorandum of Understanding on Port State Control 1982 (Paris MOU[29])

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29. http://www.parismou.org/ParisMOU/Current+Detentions/xp/menu.3972/default.aspx

2. The Acuerdo De Via del Mar Agreement on Port State Control 1992 (Latin American Agreement)

3. The Memorandum of Understanding on Port State Control in the Asia-Pacific Region 1993 (Tokyo MOU)

4. The Memorandum of Understanding on Port State Control in the Caribbean Region 1996 (Caribbean MOU)

5. The Memorandum of Understanding on Port State Control in the Mediterranean Region 1997 (Mediterranean MOU)

6. The Memorandum of Understanding on Port State Control For the Indian Ocean Region 1998 (Indian Ocean MOU)

7. The Memorandum of Understanding on Port State Control for the West and Central Africa Region 1999 (Abuja MOU)

8. The Memorandum of Understanding on Port State Control in the Black Sea Region 2000 (Black Sea MOU)

As was the case with the use of MOUs to amend the LOS Convention in the 1990s, it is interesting that MOU's have been the process used to establish the Port State Control network rather than a large multi-lateral instrument negotiated under the auspices of the IMO or some other UN body. The reason is quite simple: MOUs may lack the legal pedigree of large UN treaties, but they are treated as legally binding by the member countries. They are much easier to conclude because they require fewer ratifications and they can be flexibly modified if circumstances dictate. These instruments have clout as witnessed by the fact that the EU recently issued a Directive (2001/106/EC) which *inter alia* requires all member states to: ban ships on "black lists" from EU member ports, insists that all EU states must be a member of a regional MOU arrangement. Also, all ships entering EU member state ports must carry a special AIS-like "Black Box" which contains certain information of use to inspecting officials.

For the future, the old adage "if it ain't broke, don't fix it" applies in the case of the Port State Control MOU system since there is substantial anecdotal evidence that the Port State Control MOU system is working well. Going forward, it would certainly make sense to place pressure on states that are not part of the system to join a regional

port state control MOU. The U.S. might also take a cue from the EU and institute a requirement that, unless the flag state of ships are from countries that are party to a port state control regime, such vessels would be prohibited from entering U.S. ports. The United States might also consider expanding the scope of port state control inspections to smaller vessels (which are often below the threshold for inspection), since small fishing vessels appear to be the "vessel of choice" for those involved in smuggling drugs and illicit cargoes into the United States.[30] Also, for the Port State control system to work, all states in the MOU structure must be active participants. Accordingly, MOU partners that do not inspect or detain substandard vessels, in appropriate cases, with the required periodicity, should be subject to some type of sanction such as barring vessels flying that country's flag entry into U.S. ports.

## Regional responses to free ridership.

While there has been regional military cooperation in the Black Sea (BLACKSEAFOR) and the Asia Pacific Region (ASEAN piracy patrols), there has historically not been much regional cooperation between maritime and coastal states on the issue of apportioning the costs to coastal states of detecting and preventing illicit fishing, dumping, or vessel discharges, or for shouldering the costs of navigational aids. As indicated above, the Japanese government attempted to broker a cooperative endeavor involving large shipping countries and coastal states to help better apportion the costs of cleanup but that Asian effort has not gone very far. The IMO, working with the World

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30. DEA provided the following assessment on patters of drug movements into the United States: Besides overland smuggling, drug traffickers use ocean vessels to move Mexican marijuana up the coast of Mexico to U.S. ports, drop-off sites along the U.S. coast, or to rendezvous points with other boats bound for the United States. Law enforcement authorities in southern California indicate that marijuana is transferred from mother ships in international waters to Mexican fishing vessels. The smaller vessels then deliver the marijuana to overland smugglers on the Mexican Baja California Peninsula. Vessels below 500 tons are usually below the threshold of most Port State Control inspection regimes. http://www.dea.gov/pubs/state_factsheets.html

Bank, has also sponsored a programs of "Block Grants" to coastal states adjacent to the Straits of Malacca.[31] Whether this is a problem with the more affluent states bordering the Mediterranean Sea is not known, but it has not surfaced publicly as a problem.

There are a plethora of United Nations Environmental Program (UNEP) sponsored conventions designed to promote efforts by states to help improve the quality of the marine environment. Three examples are:

- The Mediterranean (Convention for the Protection of the Mediterranean Sea against Pollution, Barcelona, 16 February, 1976; protocols in 1976 (2), 1980 and 1982);

- The South East Pacific (Convention for the Protection of the Marine Environment and Coastal Areas of the South-East Pacific (Lima, 12 November 1981); protocols in 1981, 1983 (2) and 1989); and

- The Caribbean (Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, (Cartagena des Indias, 24 March 1983).

Those conventions establish hard and soft requirements on the member states to exchange information on sources and regional trends in pollution and on coastal states to take action to clean up conditions on their shorelines. What these conventions do not do is provide cold cash to the member states to assist them with the cleanup and enforcement costs.

Because there are large costs involved, there is no incentive for shipowners—especially those from FOC nations—to want to pay for routine pollution cleanup costs since the LOS convention has exceptionally strong provisions which protect the right of vessels from all flag states to exercise freedom of navigation. And, unless a suspect vessel makes a port call or discharges cargo in a port that is subject to rigorous Port State Control inspections, there is little opportunity to

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31. http://www.imo.org/includes/blastDataOnly.asp/data_id%3D3668/marineelectronichighwayarticle.pdf

catch offenders. As for payments of fees, it is clear that the IMO Block Grant pilot program to install state-of-the-art NAVAIDs in the Straits of Malacca is the only feasible approach in the short term since costs can be passed to all states—including FOC countries—based on tonnage. While this approach is presently region-specific, it seems the only promising way to ensure that those flag states most responsible for pollution and safety issues worldwide pay their fair share.

## Regional law enforcement

The Proliferation Security Initiative (PSI) is currently the most prominent multilateral approach to increased enforcement of the laws of the sea by like-minded navies aggressively.[32] PSI is intended to fill the enforcement gaps until replaced by international regimes such as the SUA. PSI mimics the tactics unofficially used by police departments throughout the United States to use very minor traffic infractions, i.e., a "broken tail light" as a pretext to stop a suspicious vehicle in transit so that the occupant can be questioned and to permit a limited scope inspection conducted for weapons. While there are some aspects of PSI which are still murky, the central theme is that maritime security officials (navies, coast guards, and port captains) of all member states will share intelligence on questionable vessels, then make a conscious effort to find "broken tail lights" on the most suspicious vessels, and then use whatever legal avenues are available to board and inspect the vessels.

PSI has expanded to 20 declared participants who host training exercises and other activities. Its "Statement of Interdiction Principles"[33] has also been endorsed by more than 70 of the 191 UN member states. But, PSI has its limits. First, PSI does not create substantive enforcement rights. Second, PSI has not been positively endorsed by China, Indonesia, Brazil or India. Third, arms exporting states like

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32. The So San incident was probably the zenith of PSI coalition activity to combat trade in WMD-related materials. In December 2002 Spanish and US forces operating in the Arabian Sea, seized the North Korean vessel found to be carrying 15 hidden ballistic missiles, fuel and spare parts for delivery to Yemen. The ship was subsequently released.

33. http://www.state.gov/t/np/rls/fs/23764.htm

China are likely to block more expansive use of PSI because they are concerned it will interfere with their "lawful" arms-exporting activities.

There have also been substantial regional efforts to counter piracy—mostly in Southeast Asia.[34] International criticism led Southeast Asian littoral states (Indonesia, Malaysia, and Singapore) to step up Straits security through the establishment of coordinated air and naval patrols. As a result of these, and other initiatives (including a 17 nation patrol in 2004), the number of pirate attacks in the Straits of Malacca declined in 2005.[35] Yet, piracy and other transnational threats in the Straits remain major concerns. Due to sensitivities over sovereignty, Indonesia and Malaysia have firmly rejected the recent idea of external powers such as the U.S., Japan, or India permanently stationing military forces in the Straits. They have, however, welcomed help from external powers in the form of capacity building, intelligence exchanges, and training.

The PSI and the counter-piracy patrols are commendable efforts because increased warship "presence" in areas which are frequented by illicit vessel operators is likely to deter some from criminal behavior. Despite this constellation of efforts, there are still substantial enforcement gaps as it pertains to the smuggling of conventional weapons, illegal migrants, narcotics, and ideologically based piratical activity. To close these gaps, the PSI states or Port State Control states would need to substantially increase the scope of boarding agree-

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34. The U.S. Navy established an increased presence in waters off the coast of Somalia following some incidents in 2005 in which U.S. Navy and Coast Guard vessels came to the aid of merchant vessels coming under attack from pirates. Because these are largely unilateral efforts by the U.S. Navy, they are not dealt with herein. Malaysia recently announced that armed police will be placed aboard selected tug boats and barges traversing the Malacca states so that they can immediate respond.

35. On 11 November 2004, ASEAN in cooperation with the Plus Three countries (China, Japan and RoK) and Indian Ocean countries (India, Sri Lanka and Bangladesh) adopted the Regional Agreement on Combating Piracy and Armed Robbery against Ships in Asia. Under this agreement, an Information Sharing Centre will be set up in Singapore.

ments to allow for high seas interdiction for all types of illicit cargoes and for those who do not meet the textbook definition of "a pirate." As regards piracy, even though the regional states in Southeast Asia are not anxious for direct outside participation by the U.S. or Japanese naval forces, it would still be beneficial for the U.S. to encourage regional states—say Indonesia, Malaysia, Singapore, and the Philippines—to establish MOUs wherein they agree to pursue pirates into each others' waters and consent to involuntary boardings.

# 5. Summary

It is probably not in the interests of the major maritime powers to seek renegotiation of the 1982 LOS Convention to reshape the current governance structure. The current definitional problems with piracy can be largely overcome through increased use of boarding agreements. The problem of substandard shipping is being effectively addressed through the system of port state control MOUs although smaller vessels ny and countries outside the MOU structure can escape scrutiny. To restore the balancing of interests that are set forth in the LOS Convention between coastal states and maritime states, the principle of flag state control needs to be strictly enforced because it creates a structural enforcement gap that provides legal safe havens for transnational criminals and terrorists. It is also creating a regulatory "race to the bottom." Tax and trade policies need to be considered in addressing this global problem of FOC registries and confronting states like China which have historically taken a very relaxed view when its nationals are caught engaging in illegal fishing or illicit trafficking of illegal migrants or other cargoes at sea.[36]

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36. http://usinfo.state.gov/eap/Archive_Index/
   Chinese_Organized_Crime_and_Illegal_Alien_Trafficking_Human
   s_as_a_Commodity.html

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